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1543

SUPREME COURT OF THE UNITED STATES.

No. ~~111.~~ 73.

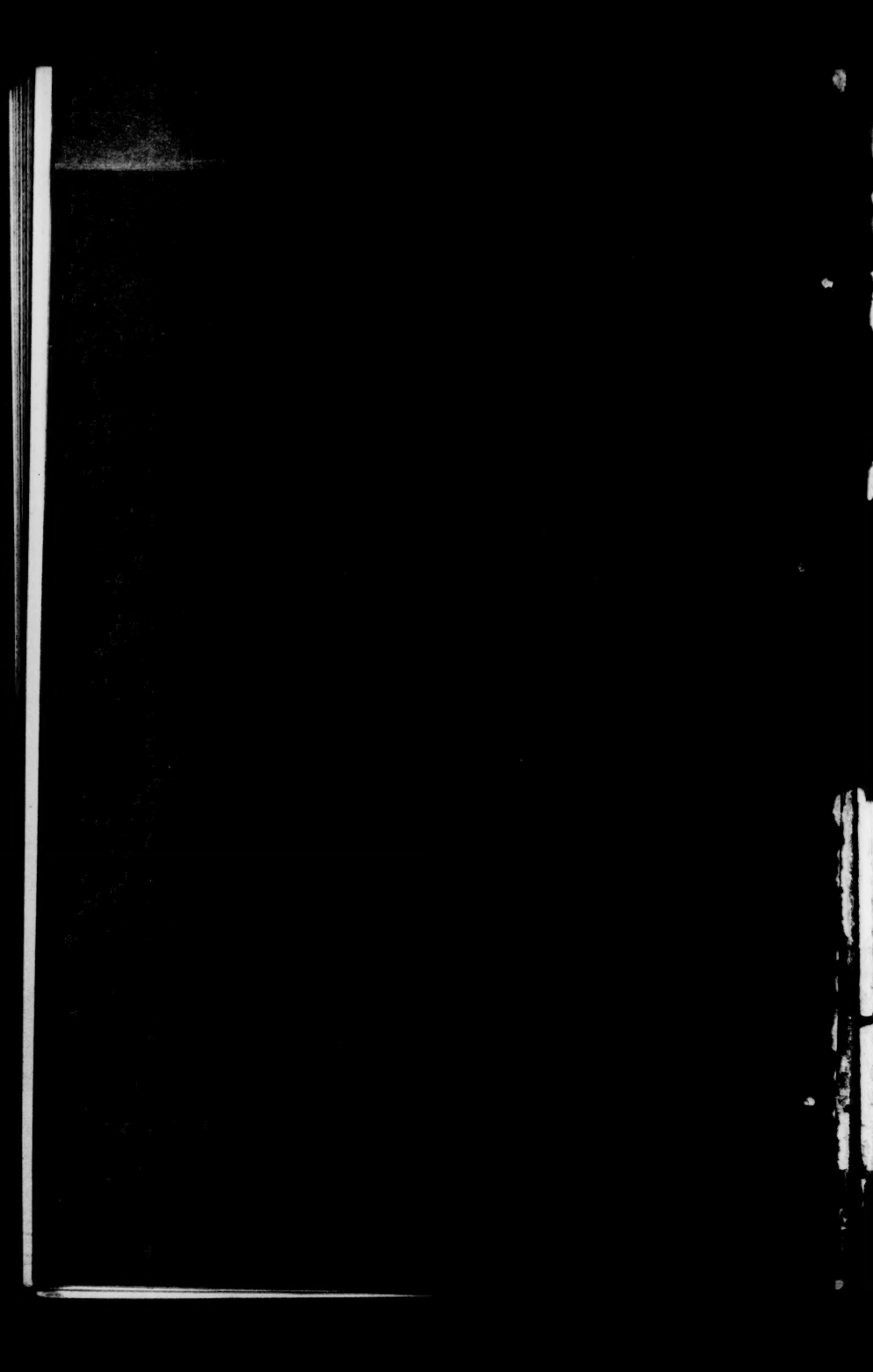
THE MINNESOTA MINING COMPANY, PLAINTIFF IN ERROR,

vs.

THE NATIONAL MINING COMPANY AND JAMES M. COOPER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

GOVERNMENT PRINTING OFFICE.



1547

SUPREME COURT OF THE UNITED STATES.

No. 144.

THE MINNESOTA MINING COMPANY, PLAINTIFF IN ERROR,

vs.

THE NATIONAL MINING COMPANY AND JAMES M. COOPER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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SUPREME COURT OF THE UNITED STATES

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1 To the Supreme Court of the United States of America:

STATE OF MICHIGAN:

The supreme court of the State of Michigan, sitting at Detroit.

THE MINNESOTA MINING COMPANY
v.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.

In obedience to a writ of error in this case, wherein the above-named plaintiffs were plaintiffs in the court below, (the district court of the Upper Peninsula, for the county of Ontonagon,) and the above-named defendants were defendants, and wherein the above-named plaintiffs were plaintiffs in error in this court, and the above-named defendants were defendants in error, I do send the record and proceedings of the said plaint, with all things concerning the same and the said writ of error, and the citation and its service, and a copy of the bond.

THE UNITED STATES OF AMERICA, *ss:*

2 The President of the United States of America to the chief justice and the associate justices of the supreme court of the State of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Michigan, before you, being the highest court of law of the said State in which a decision could be had in the suit between the Minnesota Mining Company, plaintiffs, and the National Mining Company and James M. Cooper, defendants, wherein was drawn in question the construction of statutes of the United States, and the decision was against the titles and rights specially set up or claimed under such statutes, a manifest error hath happened to the great damage of the said Minnesota Mining Company as by its complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the re-

3 cord and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-first day of July, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth.

WM. D. WILKINS,
Clerk of the Circuit Court of the United States for the Seventh Circuit and Eastern District of Michigan.

Allowed by Hon. GEO. MARTIN,
Chief Justice Supreme Court, Michigan.

THEODORE ROMEYN,
Att'y for Pl'ff in error.

5 UNITED STATES OF AMERICA, *ss:*

To the National Mining Company, of Michigan, and James M. Cooper, of Pittsburg, Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Michigan, at Detroit, in said State, wherein the Minnesota Mining Company, of Michigan, is plaintiff in error, and you are defendants in error, to show cause if any there be, why the judgment in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. George Martin, chief justice of the supreme court of Michigan, at Detroit, in said State, the 21st day of July, A. D. 1863.

GEO. MARTIN,
Chief Justice Sup. Court, Mich.

6 OCTOBER 2, 1863.

Served the within citation, personally, on the Hon. Tho's M. Howe, president of the National Mining Company, and on James M. Cooper, esquire, secretary and treasurer of said company, by exhibiting the original to them, and giving each a true copy thereof, and making the contents fully known to them, respectively; also on the said James M. Cooper, defendant, personally, by exhibiting the original to him and giving him a several copy thereof as defendant, and making the contents fully known to him.

A. MURDOCK,
U. S. Marshal, West. Dist., Fa.,
Per JNO. HERRON, *Dep'y.*

Sworn and subscribed before me this 3d day of Octo., 1863.

H. SPROUL,
U. S. Com'r.

7 Supreme Court of the United States.

THE MINNESOTA MINING COMPANY, plaintiffs in error,
v.
THE NATIONAL MINING COMPANY and JAMES M. COOPER, defendants in error.

Know all men by these presents, that we, Theodore Romeyn and Henry J. Buckley, of the city of Detroit, in the State of Michigan, are held and firmly bound unto the National Mining Company, of the State of Michigan, and James M. Cooper, of Pittsburg, in the State of Pennsylvania, in the just and full sum of five hundred dollars, (500,) to be paid to the said National Mining Company, its successors and assigns, and to the said James M. Cooper, his executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this twenty-first day of July, A. D. one thousand eight hundred and sixty-three.

8 Whereas the above named (the Minnesota Mining Company) hath presented a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Michigan:

Now, therefore, the condition of this obligation is such, that if the above named (the said Minnesota Mining Company) shall prosecute its said writ of error to effect, and answer all costs of it shall fail to make its plea good, then this obligation to be void; else to remain in full force and virtue.

(Signed) THEODORE ROMEYN. [L. S.]
(Signed) HENRY J. BUCKLEY. [L. S.]

Sealed and delivered in the presence of—
(Signed) JAMES W. ROMEYN.

Approved by (Signed) GEO. MARTIN,
Ch'f Jus. Sup. Court, Mich.

9 Filed Aug. 19, 1863.
J. PATCHIN, *Clerk.*

10 The following is a full and exact copy of the case made and record filed in the supreme court of the State of Michigan:

11 To the supreme court of the State of Michigan, sitting in Detroit:

State of Michigan, district court of the Upper Peninsula, for the county of Ontonagon.

THE MINNESOTA MINING COMPANY
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.

In obedience to a writ of error in this case, wherein the above-named plaintiffs are plaintiffs in error, and the above-named defendants are defendants in error, I do send the record and proceedings of the said plaint, with all things concerning the same, and the said writ of error.

State of Michigan, the district court of the Upper Peninsula, for the county of Ontonagan, of the 26th day of June, 1860.

STATE OF MICHIGAN,
County of Ontonagon, ss:

The Minnesota Mining Company, a body corporate in the State of Michigan, plaintiff in this suit, by Samuel T. Douglass, its attorney, comes and files this declaration as commencement of suit, and complains of the National Mining Company, a body corporate in said State, and James M. Cooper, defendants.

For that whereas, heretofore, to wit, on the first day of January, in the year eighteen hundred and sixty, the said plaintiff was
12 possessed of the lands and tenements and premises, with the appurtenances, situate in the said county of Ontonagon, known and described as follows, to wit: The east half of the northeast quarter of section number sixteen (section 16,) in township number fifty (No. 50) north, of range number thirty-nine (No. 39) west; and the east half of the southeast quarter of the same section, township, and range, containing together one hundred and sixty acres, more or less, excepting and reserving, however, from the same, two tracts of land, parcels of said premises, one of them containing twenty-two and a half ($22\frac{1}{2}$) acres, and the other twenty (20) acres, which said two tracts are described as follows, viz: One tract beginning at the southeast corner of said section and running thence west forty (40) rods; thence north ninety (90) rods; thence east forty (40) rods; thence south ninety (90) rods, to the place of beginning. And the said other tract, beginning at the northeast corner of said section, and running thence west eighty (80) rods; thence south forty (40) rods; thence east eighty (80) rods; thence north forty (40) rods, to the place of beginning.

Which said premises the said plaintiff claims in fee.

And the said plaintiff being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, in the year aforesaid, entered into the said premises and ejected the said plain-

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tiff therefrom, and unjustly withhold from the said plaintiff the possession thereof, to the damage of the said plaintiff of one hundred thousand dollars; and therefore the plaintiff brings suit, etc.

SAMUEL T. DOUGLASS,
Attorney for Plaintiff.

13 State of Michigan, in the district court of the Upper Peninsula, for the county of Ontonagon.

THE MINNESOTA MINING COMPANY, plaintiff,
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER, defendants. } Ejectment.

And the said defendants, by Alex. W. Buel, their attorney, come and demand a trial of the matters set forth in the plaintiff's declaration.

ALEX. W. BUEL,
Defendants' Attorney.

The cause was duly continued from term to term, until the August term of this court, A. D. 1861.

It then came on to be tried by the court without a jury.

Being submitted to the court, the court in vacation made the finding which is hereto attached.

Upon this finding the following judgment was entered:

In the district court of the Upper Peninsula, for the county of Ontonagon.

THE MINNESOTA MINING COMPANY
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER. } In ejectment.

This cause having been submitted to the court for decision, in the August term of the year one thousand eight hundred and sixty-one, and the honorable Daniel Goodwin, the district judge of said court, having now in the vacation next following said August term, transmitted to the clerk his judgment in said cause, specifying the facts found and the conclusions of law thereon, as appears by his decision in writing now on file; thereupon, pursuant to the statute in
14 such case made and provided, the said judgment is now entered of record as of the last day of said August term of the year one thousand eight hundred and sixty-one, as follows, that is to say:

It is considered and adjudged by the court, that the said defendants, the National Mining Company and James M. Cooper, are not guilty of the trespass and ejectment mentioned in the plaintiff's declaration and therein laid to their charge, nor of the withholding from the plaintiff of the possession of the premises also mentioned and described in said declaration, and therein laid to their charge, in manner and form as the said plaintiff hath therein complained against them.

And it is therefore further considered and adjudged, that the said plaintiff take nothing by his said suit, and that the said defendants do go thereof without day; and it is further considered and adjudged by the court, now here, that the said defendants do recover against the said plaintiff their costs and charges by them about their defence in this behalf laid out and expended, to be taxed, and that the said defendants have execution therefor.

Entered in the vacation next following the August term of said court of the year one thousand eight hundred and sixty-one.

Thereafter, and after the filing of said finding, the plaintiff alleged exceptions to said finding, which are settled and embraced in the bill of exceptions following:

State of Michigan, in the district court of the Upper Peninsula, for the county of Ontonagon.

THE MINNESOTA MINING COMPANY *vs.* THE NATIONAL MINING COMPANY and JAMES M. COOPER. } Bill of exceptions.

Afterwards, to wit, on the 6th day of September, A. D. 1861, the said cause came on to be tried before the honorable Daniel Goodwin, judge of said district court; and the plaintiffs as well as the defendants being present by their respective counsel, a trial by jury was not demanded by either party, but both parties waived the same, and consented to a trial by the court without a jury.

And thereupon the plaintiffs, to maintain the issue on their part, called as a witness the defendant, James M. Cooper, who testified to certain facts tending to show that, at the commencement of this suit, the legal title in fee of the premises in dispute was in the defendant, James M. Cooper, and that the defendant, the National Mining Company, was then in possesion of said premises, as a tenant of said Cooper, as found by the court.

The counsel for the plaintiffs then offered to read in evidence the printed geological report of Dr. Charles T. Jackson, so far as it refers to the land in dispute, for the purpose of showing that the east half of the east half of section number 16, town. 50 north, range 39 west, in the Upper Peninsula of Michigan, was reported by him as containing minerals as found by the court, which the court permitted for such purpose, and thereupon the same was read.

The counsel for the plaintiffs then offered to read in evidence the deposition of John Wilson, under the stipulation of defendants' counsel endorsed thereon, waiving objections to the form and mode of its being taken and consenting to its being read, subject, however, to any objections for irrelevancy or immateriality, a copy of which deposition and stipulation is hereto annexed, marked "Paper A."

The counsel stated that he did not offer it for the purpose of showing the opinions of some of the officers of the land office, or of the Attorney General of the United States, or of the witness as set forth

in it, and that he would omit such parts of it as referred to those opinions; but that he offered it for the purpose of showing certain facts, which the counsel specified, and which are embraced in the finding of the court, under heads numbered 6, 34, 36, 37 and
16 38, and also the other facts in it, distinct and separate from the statements of opinions and the reasoning of the witness.

The defendants' counsel objected to the reading of said deposition, that it was wholly irrelevant and immaterial, and stated, as the plaintiffs' counsel also admitted, that said deposition was the same deposition offered in evidence by the defendant Roberts, in the case of Cooper *vs.* Roberts, referred to in the court's finding, and reported in Howard's United States Reports, vol. 20, p. 480. The court decided that the objection be overruled, and that the deposition was admissible for the purposes for which it was offered, as above set forth; whereupon it was read and received by the court for those purposes, and to such decision the defendants, by their counsel, excepted.

The counsel for the plaintiffs next read in evidence a duly exemplified copy of the permit to Hempstead, dated August 5th, 1844; and also of the selection, in writing, of a tract of land by said Hempstead, and a certificate, in writing, of John Stockton, mineral agent, copies of all which are attached to the finding of the court, and are marked "Paper No. 1."

The plaintiffs' counsel next read in evidence a duly exemplified copy of the lease to Hempstead, dated 16th September, 1845, of which a copy is annexed to the finding of the court, marked "Paper No. 2."

The plaintiffs' counsel next put in evidence a duly exemplified copy of a map of the surveys of township No. 50 north, of range 39 west, certified to be correct by Lucius Lyon, the surveyor general of the district, dated 24th March, 1848.

Also, a copy of another map, certified by said surveyor general, dated on 10th June, 1848, showing the surveys of said township, with the section lines and the lines of said leasehold premises, by which it appeared that the west line of said lease included and embraced a little more than the east half of the east halves of the northeast and southeast quarter of section 16 in said township.

17 The plaintiffs' counsel next read in evidence the certified copy of the application of the Minnesota Mining Company, by E. C. Roberts, dated 6th November, 1850, to purchase the leasehold premises, including the tracts in dispute, of which a copy is attached to the court's finding, marked "Paper No. 5."

The plaintiffs' counsel next read in evidence a certificate from Henry Acker, receiver of the land office at the Sault Ste. Marie, and for the district within which these lands are situate, directed to the Commissioner of the General Office, and being in reference to said application, of which a copy is annexed to the court's finding, marked "Paper No. 6."

The plaintiff's counsel next read in evidence an exemplification of the certificate of Towbridge, the mineral agent, dated 15th December, 1850, tending to show the possession by the plaintiffs of the premises, and their compliance with the terms of the lease.

The plaintiffs' counsel next read in evidence a certified copy of a letter of the register and receiver of the land office at the Sault Ste. Marie, dated 10th November, 1851, allowing the entry by the plaintiffs of the leasehold premises, to the extent claimed by them, excepting section 16, of which a copy is annexed to the court's finding, marked "Paper No. 8."

The plaintiffs' counsel next read in evidence an exemplified copy of the appeal, by the plaintiff from this decision, to the Commissioner of the General Land Office, dated on 11th December, 1851.

The plaintiffs' counsel next read in evidence certified copies of the receipts of the proper officers, showing the payment, on the 7th November, 1851, by the plaintiffs to the United States, of the purchase-money for all the leasehold premises, except the 160 acres which include the premises in dispute; and the payment by the plaintiffs to the United States, on 5th March, 1852, of the pur-
18 chase-money for the east half of the east half of section 16, in township 50 north, of range 39 west, which includes the disputed tract, being said 160 acres.

The plaintiffs' counsel next read in evidence a copy of the letters patent of the United States for the premises in controversy, with others, dated 9th April, 1852, and of which a copy is attached to the court's finding, marked "Paper No. 10."

The plaintiffs' counsel next offered in evidence the deposition of E. C. Roberts, tending to show some of the facts embraced in the finding of the court, and read the direct examination.

The plaintiffs' counsel next read in evidence exemplified copies of two circulars, or letters of instruction, from the Commissioner of the General Land Office to the register and receiver of the land district at the Sault Ste. Marie, dated, respectively, 16th April, 1848, and 25th April, 1848, of which copies are attached to the finding of the court, marked "Papers numbers 3 and 4."

The plaintiffs' counsel next read in evidence certain conveyances, showing the transfer to the plaintiffs of the rights and estates of the patentees, in the patent from the United States, and then rested.

The defendants' counsel then opened the case for the defendants, and to maintain and prove the said issue on their part, read in evidence a duly exemplified copy of a letter from Butterfield, Commissioner of the General Land Office, to E. C. Roberts, a copy of which is attached hereto, marked "Paper B."

The defendants' counsel next read in evidence a duly exemplified copy of the decision of the Secretary of the Interior, as to the title of the State of Michigan to the premises in dispute, dated on 10th of September, 1851, of which a copy is attached to the finding of the court, marked "Paper No. 7."

The defendants' counsel next read in evidence a duly exemplified copy of the consent, in writing, of the Secretary of the In-
19 terior, dated 4th February, 1852, as to the entry, by the plaintiffs, of the land in dispute, and the patent to them with certain reservations to the State of Michigan, of which a copy is attached to the court's finding, marked "Paper No. 9."

The counsel for defendants next read in evidence the patent from the State of Michigan, to Alfred Williams, for section 16, in township 50 north, of range 39 west, including the premises in controversy, and certificate of its record, of which patent and certificate copies are attached to the finding of the court, marked "Paper No. 12."

They next read in evidence an exemplified copy of the deed, dated 19th May, 1852, from A. Williams and wife to James M. Cooper, with certificates of acknowledgment and record thereof, conveying to said Cooper said section No. 16, excepting certain parts thereof which had before been conveyed by said Williams and wife to the Minnesota Mining Company, subject to a certain reservation therein; and further conveying to said Cooper said prior reservation as found by the court, copies of which said deed and certificates of acknowledgment and record are annexed to the court's finding, marked "Paper No. 13."

They next read in evidence the deed from said Williams and wife to the Minnesota Mining Company, dated November 4th, 1851, with a certificate of the acknowledgment thereof, conveying to said company the aforesaid excepted parts of section number 16, subject to the aforesaid reservation as found by the court, of which deed and certificate of acknowledgment copies are attached to the court's finding, marked "Paper No. 14," and the deed was read in evidence solely for the purpose particularly specified in the court's finding.

They next read in evidence an act of the legislature of Michigan, passed on the 13th February, 1855, being number 135 of the acts of that year, and entitled "An act to confirm certain sales of land," and which is referred to in the court's finding.

The defendants' counsel then further gave evidence, by the
20 testimony of witnesses introduced and sworn, tending to show, as found by the court, that in the year 1848 the Minnesota Mining Company erected a stamp-mill, saw-mill, and engines, on the east half of the northeast quarter of said section 16, and upon a water-course situate on said tract; that they, as so erected, and said water-course, were remaining on said tract at the time of executing said deeds of Williams and wife to the Minnesota Mining Company, and of Williams and wife to said Cooper, and were the objects described in said deed, as being situate on the tract of 22½ acres in the northeast corner of said section described in each of said deeds; and that said objects, and each of them thus described, in fact were not then and never were on said tract of 22½ acres according to its description in said deeds by courses and distances.

The defendants' counsel then claimed that there is a latent ambiguity disclosed and established by the parol evidence in the terms of said deed of Williams and wife to Cooper, describing the excepted tract of 22½ acres in the northeast corner of said section 16, and the prior reservation therein which was thereby conveyed; and also in the terms of the prior deed therein referred to, of Williams and wife to the Minnesota Mining Company, describing the tract of

22½ acres in the northeast corner of said section 16, thereby conveyed, and the rights and interests therein, which were reserved from such conveyance.

And thereupon the defendants' counsel proposed and offered to show, by evidence to be introduced, the real intentions of the parties to said deed of Williams and wife to the Minnesota Mining Company, in respect to the description of the premises and interests conveyed by said deed, and of the reservation thereby made in the said tract of 22½ acres in the northeast corner of said section; and also the real intentions of the parties to said deed of Williams and wife to Cooper, in respect to the description of the premises and interests conveyed by said deed, and the description of the said tract of 22½ acres in the northeast corner of said section, ex-
21 cepted from such conveyance, and of the prior reservation in said tract also thereby conveyed; and the defendants' counsel further proposed and offered to introduce said evidence for the purpose of explaining and removing the ambiguity above referred to, of ascertaining and fixing the true description and boundaries of the premises, interests, and reservation aforesaid, according to the terms and effect of said deeds, and the intentions of the parties thereto; and of giving construction and effect to said deeds according to their terms and such intentions.

The plaintiffs' counsel conceding that the evidence, if admitted, would justify the conclusions of the court as afterwards expressed in the finding, denied that such evidence was admissible in an action at law, and contended that it was only admissible in equity on a proceeding to reform the deed and correct the boundaries.

The court admitted the evidence for the purposes for which it was offered, and the plaintiffs' counsel excepted.

The defendants' counsel then read in evidence certain portions of a bill filed on the equity side of the circuit court of the United States for the district of Michigan, by the plaintiffs, and E. C. Roberts, complainants, against James M. Cooper, defendant, showing certain allegations and claims by said complainants in said bill, as found by the court, and tending to show the intentions of the parties to the aforesaid deeds of Williams and wife to the Minnesota Mining Company, and of Williams and wife to James M. Cooper, in the execution of said deeds as found by the court.

They next read in evidence the cross-examination of E. C. Roberts, in the deposition which the plaintiffs had read in the direct examination, further tending to show the intention of the parties to said deeds in their execution as found by the court.

The defendants' counsel next introduced as a witness John
22 Burt, and a map of the survey of the disputed premises and of the said 22½-acre tract in the northeast corner of said section No. 16, made by him, and who testified to facts tending to show their boundaries and the boundaries of the premises and interests conveyed by the said deeds, and also the location of the steam-engines, saw-mill, and stamp-mill of the Minnesota Mining Com-

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pany, and of the water-course on which they are situated, as found by the court.

The defendants' counsel then introduced certain evidence tending to show the possession, by the plaintiffs, of the 22½-acre tract in the northeast corner of said section 16, and the nature and extent of such possession, and also tending to show that the plaintiffs employed counsel to defend the above-mentioned suit of Cooper *vs.* Roberts, in the U. S. court, as found by the court.

They then read in evidence a duly exemplified copy of the writ of possession in said case and of the return thereon, of which a copy is attached to the court's finding, marked "Paper No. 11."

The defendants rested, and thereupon the plaintiffs' counsel, in reply, offered to read in evidence the deposition of Porter Kibbee, of which a copy is hereto attached, marked "Paper 3."

Said deposition was offered for the purpose of showing that, at the time of the sale of said section sixteen, by said Kibbee, he was induced by fraudulent representations to make such sale.

The defendants' counsel objected to this proof as being inadmissible for such purpose; and thereupon, after hearing the arguments of counsel, the court sustained the objection, and decided that said deposition was inadmissible for the purpose for which it was offered; to which decision the plaintiffs' counsel excepted; but the court further decided that it was admissible so far as to show the time of the actual sale of said section No. 16.

The plaintiffs' counsel then offered, in connexion with said deposition, to show as follows:

23 That E. J. Roberts, the party making the representation to Kibbee, then knew that the land had minerals in it, and was valuable for minerals.

That this was a matter of general notoriety.

That John Bacon knew of there being valuable minerals on it.

That both Bacon and Roberts knew of the occupation and claim of the Minnesota Company.

That there was an agreement and combination between them and another party to procure the sale of the land by Kibbee, as agricultural lands, concealing their mineral character and the occupation of the Minnesota Company.

That this scheme was in fact carried out, and that, in connexion with it, Bacon, procured Williams to allow the use of his name, promising him an interest in the property.

That the opposition to the application of the Minnesota Company before the land officers and the Commissioner of the Land Office, and the appeals resulting in the decision of the Secretary of the Interior, were none of them the acts of the State authorities, but were procured and done by the parties who procured the sale by Kibbee, and without the approval or concurrence of the State authorities.

This was offered, as stated by said counsel, not to impeach the patent, but as tending to show the time when the State first actually asserted any title to the land in controversy.

To this the defendants' counsel objected. The court sustained the objection, and the plaintiffs' counsel duly excepted.

On the trial other evidence was introduced and given to the court, not material to be set forth in this bill of exceptions, tending to show the other facts not herein referred to, but which were found by the court, as specified in its finding.

24 The cause was then submitted to the court, after argument, and after deliberation the court made the finding and rendered the judgment which are of record in this case, and thereupon the plaintiffs excepted to the matters of law embodied in the said finding of the court, and alleged exceptions thereto, as follows:

The plaintiffs excepted to the matters of law embodied in said finding, under the 23 head or subdivision thereof, to wit: that there is an ambiguity in the terms of the deed of Williams and wife to Cooper, describing the excepted tract of twenty-two and a half acres in the northeast corner of said section, and the prior reservation therein, which was thereby conveyed.

They excepted also to the matters of law embodied in said finding, under the 23d head thereof, which declare that there is an ambiguity in the prior deed therein referred to, of Williams and wife to the Minnesota Mining Company, describing the tract of 22½ acres in the northeast corner of said section thereby conveyed, and the rights and interests therein, which were reserved from such conveyance.

They excepted also to the matters of law embodied in said finding, under said 23d head thereof, which declare that such ambiguity was disclosed and established by the parol evidence in the case.

The plaintiffs further excepted to the matters of law embodied in said finding, under the 28th head thereof, to wit: that it was the intention of the parties to the deed of Williams and wife to the Minnesota Mining Company to convey to said company, in addition to said tract of 22½ acres in the southeast corner of said section, a second tract in the northeast corner, as set forth in said finding, under said head.

And they excepted severally to each and every matter of law embodied in said finding, under said head thereof.

The plaintiffs further excepted to the matters of law embodied in said finding, under the 29th head or subdivision thereof, to wit: that according to the terms and effect of such deeds of Williams

25 and wife to said Cooper, and Williams and wife to the Minnesota Mining Company, and the intentions of the parties to said deeds, the true boundaries by courses and distances of said tract of 22½ acres in the northeast corner of said section are as is set forth in said finding; and that the reservation in the deed to the Minnesota Mining Company, and afterwards conveyed to said Cooper, was a reservation in a tract thus bounded; and that the true and correct boundaries of said tract are by lines running for ninety rods east and west, as set forth in said finding, under said 29th head.

The plaintiffs further excepted to the matters of law embodied, and as expressed and set forth, in said finding, under the 30th general head or subdivision thereof.

The plaintiffs further excepted to the matters of law embodied in said finding, as set forth and contained under the 39th general head or subdivision thereof, to wit: that the plaintiff had failed to establish any title or right of possession in himself to the premises demanded in his declaration, or any part thereof; and further, that the defendants had established in the defendant, James M. Cooper, a valid legal title in fee to the whole of said premises so demanded.

And further, that the defendant, the National Mining Company, was, at the commencement of this action, lawfully in possession of said premises, as a tenant holding under the said Cooper.

To each and every of which conclusions and matters of law the plaintiffs excepted, as above set forth.

The plaintiffs further excepted to the matters of law embodied in said finding, under the 40th general head or subdivision thereof, and as set forth therein, to wit: that the defendants were not guilty of the trespass and ejectment mentioned in the declaration, and therein laid to their charge, nor of the withholding from the plaintiffs of the possession of the premises mentioned and described in the declaration.

And further, that the plaintiff take nothing by his suit.

And further, that the defendants recover against the said plaintiff their costs and charges.

26 And inasmuch as the said several matters so produced and given in evidence, and none of the said exceptions so offered and made to the opinions and decisions of the said court do appear upon the record of said trial, therefore, on the prayer of the plaintiff, by his counsel, the district judge of said court hath allowed and signed this bill of exceptions, and hereto set his seal, this 11th day of June, A. D. 1862.

D. GOODWIN,
District Judge, U. P.

Paper A.

I, John Wilson, of Chicago, in the State of Illinois, aged nearly forty-eight years, do depose and say, that my name, age, and place of residence, are as above specified; and I further say, that I was first employed in the General Land Office, at the city of Washington, about the year 1831; that I resigned my position in that office in June, 1837; that I was again appointed in that office in 1843; to the best of my recollection, this latter appointment having been that of principal clerk of surveys in said office; that I remained in that position till 1850, when I was appointed principal clerk of public lands, and held that office till the fall of 1852, when I was appointed, by President Fillmore, Commissioner of said General Land Office, which office I filled till the 27th day of June, 1855, when my commission was revoked by President Pierce. While filling the position of principal clerk of surveys, I prepared a report for the Commissioner, reviewing the whole practice relative to the mineral lands, on which I understand the Attorney General founded his opinion, that the

leases and permits for working copper mines, previously issued by the War Department, were without authority of law, and consequently void. These leases were all in one form, and embraced the same conditions. There was but one form prepared for the
27 department or used by it. On this decision the acts of 1st and 3d March, 1847, (Laws of U. S., Little & Brown's ed., vol. 9, pp. 146 and 179,) were passed. By some oversight the land officers for the district authorized by these acts were not appointed till 1848; the session of 1847 having been closed before the nominations were sent in, and the President had not the power to make those appointments during the recess, as it was held they were not vacancies. Prior to the appointment of these officers, some of the most important leases expired; and most of them that were entitled under the law expired before the surveys were made, and the plats returned, so that they could enter. At all events, all of them had expired before the close of the year 1849, and they were extended in this manner. When the first leases were about to expire, or had expired, the subject was brought to the notice of the head of the office. It was held, after conference with the Attorney General, that all the lessees should be regarded as holding over under their leases, as by the terms of these leases a forfeiture could only be worked in the manner therein specified. On this decision and construction, all the action was had in relation to the leases, and the rights of the parties under them, and consequently they were only required to enter the lands embraced by their leases prior to the time appointed by the President's proclamation for the commencement of the sale of the lands included in such leases.

Where such leases included the whole or any part of the sixteenth section, the lessees' right was considered paramount, or superior, to that of the State, for the following reasons, to wit:

By the act of the 15th June, 1836, admitting the State of Michigan into the Union, it is expressly provided. "That nothing in this act contained, or in the admission of said State into the Union as one of the United States of America, upon an equal footing with the original States in all respects whatever, shall be so construed or understood as to confer upon the people, legislature, or other
28 authorities of the said State of Michigan, any authority or right to interfere with the sale by the United States, and under their authority, of the vacant and unsold lands within the limits of said State, but that the subject of the public lands, and the interests which may be given to the said State therein, shall be regulated by future action between Congress on the part of the United States, and the said State, or the authorities thereof."

By the act of 23d June, 1836, (vol. 5, p. 58,) section 16 in every township, and when such section had been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, were granted to the State of Michigan. At that time, when the act of 1847 was passed, the surveys had not been extended to the region of country where the lands were situated that are now in controversy. Hence the right of the State, under this act, had not attached to any

particular body of land; the surveys of the leases, on the contrary, had been made, and the rights granted by the act of 1847 attached to the particular land so surveyed. It was perfectly competent for the Executive to have ordered a new and distinct base line and meridian to be laid down for the Upper Peninsula of Michigan, and this would have wholly changed the location of the 16th section. It was also perfectly competent for Congress to have directed a different mode of surveying these lands, as was done for Louisiana and Mississippi, by the act of 3d March, 1811, and 24th May, 1824, so that the tracts which otherwise would have been included within the 16th section would have wholly different designations. To provide for all such cases, the act of 20th May, 1826, was passed, appropriating lands for the support of schools in townships and fractional townships not provided for; other and special provision was made for such cases in several of the States, and especially with reference to the lands in Wisconsin, and to the Chickasaw reservation in Mississippi and Alabama, and the Creek cessions in the latter State. In all these cases, and many others, the base lines and meridians were estab-
29 lished in the States, and the grant of the 16th section had been made to the States, before the lands, including many sections sixteen, had been reserved or granted to the Indians. To hold that the State has a vested right in section 16, wherever it may fall, and that the United States have no right to dispose of it, would be to unsettle many of the most valuable titles in the public land States.

When the business connected with the mineral lands was tranferred from the War Department by the act of 1847, it was placed under my charge, as principal clerk of surveys, in the General Land Office. The forms attached, A and B, were those of the permits and leases transferred with the other documents by the War Department; those marked C and D were prepared by me after full conference with the Commissioner and the Secretary of the Treasury. I was, of course, perfectly familiar with all questions that arose in relation to these lands, and the decisions on them. One of the earliest and most important, as already stated, was in relation to the leases that had expired and would expire before the offices were opened or the surveys made. The decision and rule of action was, as stated, that the lessees should be regarded as holding over under the lease, no forfeitures having accrued. This rule was freely communicated and became the basis of action in all cases. Copies of them, and with a notice that they constituted the rule of the government, and would regulate its practice, were sent to all the land offices in Michigan and Wisconsin; and every lessee in the mineral district waited for more than three years from the date of the lease before he applied for or obtained his patent.

(Signed) JOHN WILSON.

30 *Stipulation endorsed on the above.*

In the district court of the Upper Peninsula for the county of Ontonagon.

THE MINNESOTA MINING COMPANY
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.

It is stipulated and agreed that the within deposition of John Wilson may be considered as regularly taken in this cause, and that it may be used in evidence on the trial, with the same force and effect as if regularly taken; subject to all objections for relevancy and competency.

(Signed) A. W. BUEL,
Defendants' Attorney.

Paper B.

GENERAL LAND OFFICE, *May 27th*, 1851.

SIR: You are advised, in reply to your letter of the 15th instant, that the State of Michigan has appealed from the decision of this office, that the lessees were entitled to section 16 where it came within the limits of their lease, and this office is now waiting until she has submitted, through her agent, an argument in support of her claim.

When the question shall have been decided, the land officers will be duly advised, with instructions to inform the lessees interested of its import.

You are also advised that if the company can prove to the satisfaction of the office that they were prepared to pay for the land covered by their lease in November, 1850, and applied to the receiver to be permitted to do so, and were refused for the reason that the office was not open for the transaction of business, the rents will be remitted from that date.

I am, very respectfully, your ob't serv't,
J. BUTTERFIELD,
Commissioner.

E. C. ROBERTS, Esq.,
Agent, &c., Sault Ste. Marie, Michigan.

31 *Paper C.*

State of Michigan, the district court of the Upper Peninsula for the county of Ontonagon.

THE MINNESOTA MINING COMPANY
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.

Deposition of Porter Kibbee, a witness produced, sworn, and examined on the part of the plaintiff in this cause, in pursuance of the

notices hereto annexed, before Frederick B. Porter, a circuit court commissioner for the county of Wayne, at Detroit, in said county of Wayne, on the fifteenth day of August, A. D. 1861.

Hon. Samuel T. Douglass appears for the plaintiff, and Luther S. Trowbridge, esquire, appears for the defendant; and thereupon

Porter Kibbee, being duly sworn, deposes and says: I resided in the city of Detroit from January, 1849 or 1850, until through the year 1854. I was commissioner of the land office of the State of Michigan. As such commissioner, I sold school section sixteen, in town. fifty north, of range 39 west, being the same section on which the National Mining Company is located; I sold it in the year 1851, in the month of February, I think; the notice of the sale was published in the Lansing Journal, the State paper at that time, and was published for four weeks; I think no other notice of the sale was given. I was asked to advertise that land for sale by Elijah J. Roberts, who was then a senator from the Upper Peninsula. A few days before the legislature convened, three or four days, or a week, perhaps, Mr. Roberts came into my office, at Lansing, and requested me to advertise said land for sale. I asked him whether the land had any value on account of minerals; he said it had not—it had none whatever; that it was principally valuable for timber, being
32 contiguous to the mines. I told him if it was valuable for minerals I should consider myself bound to withhold it from sale. I have since heard that the east half of said section is valuable for minerals, but had no knowledge that it was at that time whatever. I was influenced in offering the land for sale by his representations, and the fact that he was senator from that district, and that he was not a man who had had much to do with speculations, so far as I had ever known. I never heard any intimation that any part of that section was valuable for mineral purposes, or that it was occupied or worked by any mining company, until some time after the sale. I think Mr. Roberts told me that the land was worth something for agricultural purposes, but was chiefly valuable for its timber. The sale took place on the day it was advertised to take place, in February, I think. The land was advertised for sale at least four weeks. It may have been advertised more than four weeks. Four weeks was the usual time for advertising land sales; it was usually the custom of the office to advertise for four weeks. There was no law fixing the time of advertisement. My recollection is, that John Bacon bid off the said section, at the sale, for Alfred Williams; the certificate was issued to Alfred Williams, but I do not recollect to whom it was delivered. I do not remember seeing Mr. Williams in connection with the transaction; he may have been there, but I do not recollect whether he was or not. I think that John Bacon was present at the sale and Mr. Roberts also. There was but one bid made for said section at said sale; that was four dollars per acre, the minimum price fixed by law, and it was struck off for that.

(Signed) PORTER KIBBEE.

Taken, sworn to and subscribed before me, at Detroit, Wayne county, this 15th day of August, A. D. 1861.

(Signed) FRED. B. PORTER,
Circuit Court Commissioner, Wayne County, Michigan.

The foregoing deposition was duly objected to by the counsel for the defendants for irrelevancy and incompetency.

Detroit, August 15, 1861.

(Signed) FRED. B. PORTER,
Circuit Court Commissioner, Wayne County, Michigan.

The following is the finding of the court:

33 State of Michigan, the district court of the Upper Peninsula for the county of Ontonagon.

THE MINNESOTA MINING COMPANY
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.

The issue in this action having come on for trial at Ontonagon on the 6th day of August, A. D. 1861, in the August term of this court, and having been tried by the court without a jury, and the plaintiff having requested that the court should specify the facts found and the conclusions of law thereon, the court does find as follows:

1st. That on the 5th day of August, A. D. 1844, Walter Cunningham, mineral agent for mineral lands of the United States, gave to Joseph L. Hempstead, a written permit, for the term of one year from that date, to examine and dig for lead and other ores on any part of the lands known as the mineral district, in the region of country lying south of Lake Superior, which was acquired by the United States from the Chippewa Indians by the treaty of October 4th, A. D. 1842, of which permit a copy is hereto annexed as part of this finding, marked "Paper No. 1."

2d. That under and by virtue of said permit, within one year from its date, viz: on the 7th day of July, A. D. 1845, he, the said Hempstead, made selection in writing of a tract of land for the purpose of mining thereon, and on the 11th day of July, A. D. 1845, transmitted to the then Secretary of War his aforesaid selection in writing, accompanied by a certificate in writing of John Stockton, superintendent of mineral lands, that the description of the tract selected did not interfere with any other location made under proper authority;

34 a copy of which said selection in writing, and of said certificate, is annexed hereto as part of this finding, and is set forth in the same paper writing hereto annexed and above referred to as marked "Paper No. 1."

3d. That on the 16th day of September, A. D. 1845, the then Secretary of War gave to the said Hempstead a lease in writing, for the term of three years from that day, of the tract of land selected by said Hempstead as aforesaid, a copy of which lease in writing is hereto annexed as part of this finding, marked "Paper No. 2."

4th. That the corners of the township No. 50 north, range 39 west, and of all the other townships in that part of the Upper Peninsula, were established, and said township No. 50 was surveyed and run out into sections by the government of the United States in the summer of 1847, and said survey was duly returned and approved in the fall of that year.

5th. That the west boundary line of said leasehold premises runs north and south through and near the middle of the east halves of the northeast and southeast quarters of said section sixteen, and is a few links west of and distant from the west boundary line of the east half of said east halves, and thus includes within the original limits of said lease a little more than the east half of said east halves.

6th. That on the 16th day of April, A. D. 1848, the Commissioner of the General Land Office issued a letter of instructions to the register and receiver of the land office of said district at Sault Ste. Marie, Michigan, a copy of which is hereto annexed as part of this finding, marked "Paper No. 3." That on the 25th day of April, 1848, the said Commissioner issued another letter of instructions to said register and receiver, a copy of which is hereto annexed as part of this finding, marked "Paper No. 4;" that said letters of instructions were prepared by the chief clerk in the General Land Office after full conference with the Commissioner and the Secretary of the Treasury; that printed copies of them were forthwith forwarded by said Commissioner to said register and receiver; and that they came to the knowledge of the Minnesota Mining Company shortly after they were issued.

7th. That in the month of May, A. D. 1849, Enoch C. Roberts, in behalf of the Minnesota Mining Company, intending to enter the said leasehold premises, if they could be, inquired verbally of the register of said land office if said premises could be entered, and was told that they could not be entered until they were proclaimed for sale by the President.

8th. That on the 6th November, A. D. 1850, said Minnesota Mining Company, through said Roberts, made their first formal written application to the receiver of said land office to purchase their location, and submitted their proofs and all the necessary papers for that purpose, which said receiver refused to act upon, for the reason that the land office was then closed for want of a register, a copy of which said written application is hereto annexed as part of this finding, marked "Paper No. 5;" and in reference to said application, said receiver did, on the 28th day of June, 1851, give a certificate directed to the Commissioner of the General Land Office at Washington, a copy of which certificate is hereto annexed as part of this finding, marked "Paper No. 6."

9th. That Dr. Charles T. Jackson, geological surveyor of the mineral lands of the United States in Michigan, made a report to the Secretary of the Interior, dated November 10th, 1849, and printed as one of the accompanying documents of the President's annual message to Congress in December, 1849, which report contains a list of

the lands in the Upper Peninsula reported as containing minerals, and in said list is embraced the east half of said section 16.

10th. That in respect to said section 16 and other sections 16 in like manner interfered with or covered by mineral leases in the Upper Peninsula, the State of Michigan, in the spring of 1851, made
36 claim to the same before the Commissioner of the General Land Office, under the compact for her admission into the Union, *versus* the holders of leases and permits claiming thereunder, and under the act of Congress of March 1st, 1847, and on the 22d April, 1851, said Commissioner decided adversely to the State; that the State appealed from such decision to the Secretary of the Interior; that the Minnesota Mining Company was, on the 21st May following, notified of such appeal by said Commissioner; and that on the 10th September, 1851, in the matter of said appeal, the Secretary of the Interior decided in favor of the claim of the State of Michigan, and that the Commissioner's decision of April 22d, 1851, be reversed, a copy of which decision is hereto annexed as part of this finding, marked "Paper No. 7."

11th. That on the 10th November, A. D. 1851, the Minnesota Mining Company applied to the officers of the land office at Sault Ste. Marie to enter and purchase said leasehold premises under protest as to their right to the portion of section 16 claimed by them, on which application said land officers decided to allow said company to enter the lands within the limits of their lease to the extent claimed by them, excepting section 16, a copy of which decision is hereto annexed as part of this finding, marked "Paper No. 8."

12th. That the Minnesota Mining Company appealed to the Commissioner of the General Land Office, from so much of said land officer's decision of 10th November, 1851, as denied to said company the right to enter any part of said section 16; that on such appeal, said decision was, on the 15th December, A. D. 1851, confirmed by said Commissioner; that from said last-mentioned decision said company, by their agent, appealed to the Secretary of the Interior, who thereupon re-affirmed his aforesaid decision of September 10th, 1851, but in order to enable said company to test their title to any part of said section 16 covered by said lease with any adverse party claiming under the State of Michigan, gave his consent in writing on the
4th February, A. D. 1852, to the Commissioner of the Gen-
37 eral Land Office, that the entry of said company might embrace all the lands covered by their lease, with the condition that no patent should issue therefor without a reservation of the right of the State of Michigan to the disputed portions of said section covered by said lease; a copy of which consent in writing is hereto annexed as part of this finding, marked "Paper No. 9."

13th. That thereupon the said Minnesota Mining Company did enter the east half of the northeast quarter and the east half of the southeast quarter of said section 16, and on the 9th day of April, A. D. 1852, the patent of the United States therefor was issued to said company, reserving any right which the State of Michigan may have in and to the same under and by virtue of the provisions of the

first section of the act of Congress of 23d June, 1836, entitled "An act supplementary to the act entitled 'An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions,'" a copyof which said patent is hereto annexed as part of this finding, marked "Paper No. 10;" and that the Minnesota Mining Company paid to the United States the purchase money for the whole of its location, and for all the land covered by the said patent.

14th. That the Minnesota Mining Company, in the fall of the year 1847, took possession of the said leasehold premises, and embraced with such possession the east half of the southeast and northeast quarters of said section 16, and continued in open and uninterrupted possession thereof by themselves or their tenants until the 14th June, A. D. 1858, when, as hereinafter stated, the said James M. Cooper, plaintiff, in an action at law against Enoch C. Roberts, who was then holding as a tenant of the Minnesota Mining Company, was put in possession of the whole of the east half of the southeast and northeast quarters of said section 16, excepting two tracts of twenty-two and one-half acres each, lying in the southeast and northeast corners of said section, particularly described in the writ of
38 possession hereinafter mentioned, which was issued on the judgment rendered in said action.

15th. That immediately after said Minnesota Mining Company took possession of said premises as aforesaid, said Company commenced mining operations on the east half of the northeast quarter of said section 16, and in the following year, 1848, sunk a shaft, drove a level, put up a stamp-mill with engines, raised copper and made some improvements and clearings thereon, and afterwards, in the same year, 1848, erected a saw-mill thereon; that said stamp-mill and saw-mill were situated upon the east side of a water-course on said tract, at a point thereon which is distant about 5 rods from the north line of said section, and about 60 rods from its north-east corner; said water-course flowed across said tract, and in its whole course across it was near to the northwest corner of said tract, and was wholly west of said mills, and that said shaft, level, copper, improvements, and clearings, stamp-mill, saw-mill, water-course, above mentioned, were upon the west half of the east half of the northeast quarter of said section 16, and were west of the west boundary line of said leasehold premises as described in the lease.

16th. That the said Minnesota Mining Company was, at first, a voluntary joint stock association for mining purposes, organized and going into operation early in the year 1847. That it was incorporated by special act of the legislature of Michigan, in 1849; that its stockholders, on the 24th May, 1855, organized a new company by virtue of an act of the legislature of Michigan, approved February 5th, 1853, entitled "An act to authorize the formation of corporations for mining, smelting, or manufacturing iron, copper, mineral coal, silver, or other ores or minerals, and for other manufacturing purposes;" and that said first company transferred all its rights and interests to said specially chartered company, and said specially

chartered company transferred all its rights and interest to said new company, the present plaintiffs.

17th. That when the said Minnesota Mining Company made
39 their first formal written application as aforesaid, to enter said leasehold premises, on the 6th November, A. D. 1850, they were then and ever afterwards were the assignees and holders of the lessee's rights under said lease, by and under assignment from said Hempstead, and during such period fulfilled all the conditions and requirements of said lease imposed on them as such assignees.

18th. That the defendants, the National Mining Company, were specially incorporated by act of the legislature of Michigan in 1848, for the purposes and business of mining, and have ever since existed as such corporation, and been engaged in the business aforesaid; that, at the commencement of this suit, the said James M. Cooper claimed to hold the legal title to the premises demanded by the plaintiff in his declaration; that said James M. Cooper was put into possession thereof by the marshal of the United States for the district of Michigan, on the 14th June, A. D. 1858, under and by virtue of a writ of possession issued out of the circuit court of the United States for the district of Michigan, upon a judgment rendered by said court, in a certain action of ejectment brought in said court by the said James M. Cooper, plaintiff, against the said Enoch C. Roberts, defendant, of which writ of possession a copy is hereto annexed as part of this finding, marked "Paper No. 11;" that said Cooper continued to hold such possession until, whilst so holding, he put the said defendant, the National Mining Company, into possession as a tenant of said premises; and that said National Mining Company was thus in possession of said demanded premises, as a tenant of said Cooper, at the commencement of this suit.

19th. That on the 25th day of February, A. D. 1851, Porter Kibbee, then commissioner of the land office of the State of Michigan, sold the aforesaid section 16, as part of her primary school lands, to Alfred Williams, for the sum of two thousand five hundred and sixty dollars, which sum was duly paid by said Williams, as provided for by law; that on the 13th November, A. D. 1851, the governor of the State of Michigan issued his patent under the great seal of
40 the State for said section to said Alfred Williams, his heirs and assigns, of which patent a copy is hereto annexed as part of this finding, marked "Paper No. 12," and that an act of the legislature of Michigan to confirm such sale to said Williams, and certain other sales of section 16, was afterwards passed, entitled "An act to confirm certain sales of land," and approved February 13th, 1855."

20th. That on the 19th May, 1852, said Alfred Williams and his wife, for the consideration of ten thousand dollars, paid by said James M. Cooper to said Williams, by deed conveyed to him, said Cooper, his heirs, and assigns, all of said section 16, excepting two certain tracts of twenty-two and one-half acres each, one of said tracts being in the southeast corner of said section, and the other of said tracts being in the northeast corner of said section; said second

excepted tract in the northeast corner being described as follows, viz:

"And the second tract, beginning at the northeast corner of said section sixteen (16,) running thence west forty (40) rods; thence south ninety (90) rods; thence east forty (40) rods; and thence north ninety (90) rods to the place of beginning, containing also twenty-two and a half acres of land."

That said two excepted tracts are further described in said deed of Williams and wife to Cooper, by reference to a certain prior conveyance thereof, and to a certain reservation in such prior conveyance of certain rights and interests in the said second tract, in the northeast corner of said section, which rights and interests, so reserved, are, by the said deed of Williams and wife to said Cooper, conveyed to him, said Cooper.

That the aforesaid further description of said two excepted tracts, in said deed of Williams and wife to Cooper, is in these words, viz: "Said two tracts having been heretofore conveyed to the Minnesota Mining Company; but there having been, in the conveyance of the same, reserved from said second tract the right to all
41 mines or minerals now discovered, or that may hereafter be discovered thereon, and the right of working the same, provided that such mining operations shall not incommode the working of the engines and mills of the Minnesota Mining Company on said second tract, or obstruct the stream of water thereon, on which their stamp and saw mills are situated, it is intended and hereby provided that this instrument shall convey all the rights and interests so reserved from said second tract;" and a copy of said deed of Williams and wife to said Cooper is hereto annexed as part of this finding, marked "Paper No. 13."

21st. That the prior conveyance of said two excepted tracts of twenty-two and one-half acres each, referred to as above, in said deed of Williams and wife to Cooper, is a deed of said Williams and wife to the Minnesota Mining Company, dated November 4th, 1851, conveying said two tracts to said company, and describing said second tract in the northeast corner of said section by the same boundaries, as to courses and distances, as in said deed of Williams and wife to said Cooper, and by a reservation of certain rights and interests in said second tract, which reservation is in these words, viz: "Reserving, however, on the said last-described tract the right to all mines or minerals now discovered, or that may hereafter be discovered thereon, and the right of working the same, provided that such mining operations shall not incommode the working of the present steam engine, stamp-mill, and saw-mill of the Minnesota Mining Company on said tract, nor obstruct the stream of water on which said stamps and saw mill are situated, to the detriment of said Minnesota Mining Company;" and a copy of said deed of said Williams and wife to said Minnesota Mining Company is hereto annexed as part of this finding, marked "Paper No. 14."

22d. That the plaintiff, in seeking to establish his title to the premises in controversy, did not introduce in evidence the afore-

42 said deed of Williams and wife to the Minnesota Mining Company, but the same was introduced by the defendants in their defence, for the purpose of explaining and giving effect to the said deed of Williams and wife to Cooper, as being the prior conveyance referred to in said deed to Cooper, and showing the reservation which was made by said deed to the Minnesota Mining Company, and afterwards conveyed to Cooper in his said deed from Williams and wife; and for the purpose, in connexion with other facts given in evidence, and herein found by the court, of showing and ascertaining the true boundaries of said tract of twenty-two and one-half acres, in the northeast corner of said section No. 16, conveyed to said Minnesota Mining Company, by said deed to them from Williams and wife.

23d. That there is an ambiguity in the terms of said deed of Williams and wife to Cooper, describing the excepted tract of 22½ acres in the northeast corner of said section, and the prior reservation therein, which was thereby conveyed; and also in the terms of the prior deed therein referred to, of Williams and wife to the Minnesota Mining Company, describing the tract of 22½ acres in the northeast corner of said section thereby conveyed, and the rights and interests therein which were reserved from such conveyance; and that such ambiguity in said deeds was disclosed and established by the parol evidence in the case.

24th. That the said stamp-mill, saw-mill and engines of the said Minnesota Mining Company are the same hereinbefore referred to, as erected by said company in the year 1848, on the east half of the northeast quarter of said section 16; that they, as thus erected, and the said water-course, were remaining on the said land at the time of the execution of said deeds of Williams and wife to said Minnesota Mining Company, and of said Williams and wife to said Cooper, and were the objects then and thus described in said deeds, as being situated on said second tract of 22½ acres; and that said objects and each of them, as thus described, in fact, were not there, and
43 never were on said second tract of 22½ acres, according to its description in said deeds by courses and distances.

25th. That the action of ejectment hereinbefore referred to as brought by the said James M. Cooper against the said Enoch C. Roberts, in the circuit court of the United States for the district of Michigan, was brought to recover possession of the east half of the southeast quarter and the east half of the northeast quarter of said section 16, excepting therefrom the two tracts of 22½ acres each, one in the southeast corner and one in the northeast corner of said section, according to the boundaries of such excepted tracts by courses and distances, as the same are described in the aforesaid deeds of Williams and wife to Cooper, and of Williams and wife to the Minnesota Mining Company; that at the time of commencing said action, said Roberts was in possession of the premises demanded in said action as a tenant under the said Minnesota Mining Company, and said company did employ counsel and defend said suit.

26th. That whilst the said action of ejectment in the circuit court

of the United States for the district of Michigan was pending in the month of June, A. D. 1856, said Minnesota Mining Company and said Enoch C. Roberts, as complainants, filed in said court their sworn bill in equity against said James M. Cooper, in which, amongst other things, they claimed and alleged that in the contract for purchase, on which said deed of Williams and wife to said company, of November 4th, 1851, was executed, it was agreed that the lines of the said tract of 22½ acres in the northeast corner of said section "should be so located and placed as to include thereon said steam stamp-mill, saw-mill, steam engine and stream of water."

And also claimed and alleged, "that the receiving of a perfect and indisputable title to so much of said lands as embraced their mill-sites, mills, stamp-works, machinery, and the flow of water, was one of their objects, and a principal object, in making said contract."

44 And also claimed and alleged that said deed of Williams and wife to said company was executed "with a view to carry out their agreement" aforesaid.

And also claimed and alleged that the purchase-money for the premises conveyed by said deed was paid under the belief "that said tract of land, situate in the northeast corner of said section, as described in said conveyance, included their mills, mill-sites, machinery, and said stream of water on which their stamp and saw mills are situated."

And also claimed and alleged that subsequently to the execution of said deed they discovered "that the description of said second tract in said deed specified is erroneous, and that the said lines therein set forth do not include their mills, mill-sites, machinery, nor the stream of water on which their stamp and saw-mills are situated, but that these lie wholly outside of the lines specified in said deed."

And also claimed and alleged that, "by changing the distances west and east from those north and south, so as to secure to them their mills, mill-sites, and the said stream of water, without enlarging the quantity of land embraced in the conveyance," "said conveyance would be made to conform to said agreement as in fact made between the parties, and would realize and carry out their true intent and meaning."

And also claimed and alleged that they could not "safely proceed to the trial of said action" of ejectment in the circuit court of the United States, "and to their defence therein, without discovery from the defendant of the several matters charged" in said bill.

And also claimed that the said James M. Cooper, defendant in said bill, should release and convey to said Minnesota Mining Company "the whole of the premises" for which said action was brought, "or so much of said premises as embrace the mills of the Minnesota Mining Company, and as are necessary to the enjoyment of the

45 stream of water on which their mills are situated; and that said Cooper should be perpetually enjoined from prosecuting said action."

27th. That ever since the execution of said deed of Williams and wife to said Minnesota Mining Company, said company by itself, its

tenants and agents, have claimed the right to possess said tract of 22½ acres in the northeast corner of said section 16, including their said stamp-mill, saw-mill, engines, and the said water-course, according to those boundaries of said tract which are hereinafter found by this court to be the true and correct boundaries thereof, and have in fact been in actual possession and occupation of said mills, engines, and water-course, and of various portions of said tract, according to such boundaries thus found by this court.

28th. That it was the intention of the parties to said deed of Williams and wife to the Minnesota Mining Company to convey thereby to said company, in addition to said tract of 22½ acres in the southeast corner of said section, a second tract in the northeast corner of said section, which should contain the objects described in said deed as being on said second tract; that it should contain 22½ acres of land, and that it should be bounded by north and south lines of forty rods each, and by east and west lines of ninety rods each, and that from a tract thus bounded the reservation described in said deed should be made; and the court further finds, that the parties to said deed of Williams and wife to Cooper intended to except in such conveyance a tract thus bounded in the northeast corner of said section, except as to the prior reservation therein described and conveyed to said Cooper, and that such reservation was intended to be the same as the aforesaid prior reservation described and intended in said deed of Williams and wife to the Minnesota Mining Company.

29th. That, according to the terms and effect of such deeds of Williams and wife to said Cooper, and of Williams and wife to the Minnesota Mining Company, and the intentions of the parties
46 to said deeds, the true boundaries by courses and distances of the said tract of 22½ acres in the northeast corner of said section are as follows, viz: beginning at the northeast corner of said section 16; running thence west ninety (90) rods; running thence south forty (40) rods; running thence east ninety (90) rods; and running thence north forty (40) rods to the place of beginning; that said tract thus bounded will include on it the objects described as aforesaid in said deeds; that the reservation made by said deed to the Minnesota Mining Company, and afterwards conveyed to said Cooper, is a reservation in said thus bounded tract of 22½ acres; and that the west boundary line of said tract of 22½ acres, running south forty (40) rods, as aforesaid, and the south boundary line of said tract, running east ninety (90) rods as aforesaid, form part of the true and correct boundaries of the premises conveyed to said Cooper in said deed of Williams and wife to him, said Cooper.

30th. That the premises in fact conveyed to said Cooper by said deed of Williams and wife to him, said Cooper, include the whole of said section 16, excepting therefrom the aforesaid tract of 22½ acres in the southeast corner of said section; and also excepting the aforesaid tract of 22½ acres in the northeast corner of said section, having the boundaries by courses and distances, herein above found by this court to be the true and correct boundaries thereof; and that the reservation conveyed by said deed to Cooper is in fact a reserva-

tion in such second excepted tract of 22½ acres in the northeast corner of said section, according to the true and correct boundaries thereof, as herein above found by this court.

31st. That the land offices at the Sault Ste. Marie were not opened, nor were the land officers for the district within which these lands were situated appointed until in the year 1848.

32d. That the lands were not offered for sale under the
47 President's proclamation until the first day of September, 1851, that being the day fixed for the sale, and the date of the proclamation being 6th May, 1851.

33d. That the reasons for delaying to apply to enter the lands were, that the Minnesota Mining Company had been informed by the officers of the United States, and believed and understood that under the instructions and circulars of the Treasury Department, it was not necessary to pay, nor to offer to enter and pay for the lands, until they were offered for sale by the President.

34th. That the continuance of the possession and occupancy by the Minnesota Mining Company, according to the original terms of said lease—the payment of rent and the allowance of such continuance, and the acceptance of such rent by the United States—were in pursuance of such treasury circulars, and the action of the officers of the United States under them, and of their arrangement with said company for securing the continued payment of rent under said lease.

35th. That the Minnesota Mining Company had no knowledge previous to the time of their application to purchase the same in 1850, that the State claimed the land in controversy.

36th. That a part of the lands embraced in the mineral range of the Lake Superior land district were, prior to the year 1846, held by parties under permits or leases similar to those granted to Hempstead and assigned to the Minnesota Mining Company; that all such permits or leases were alike in form, and embraced the same conditions.

37th. That early in the year 1846 the furt her issue of permits and leases ceased.

That some of the most important of them had expired, so far as related to the original term of three years, before the organization of the land office and the appointment of the officers of the district. That all of them thus expired before the close of the year 1849.

That in all cases where the lessees did not abandon the leases,
48 they were allowed to hold over and to pay under the said Treasury instructions.

38th. That patents issued to them as existing and continuing lessees, entitled to enter and pre-empt the land as such, and that no patent was thus issued, nor did any lessee apply to enter his land, until after the expiration of the term of three years specified in the lease.

39th. In consideration of the matters and facts above found and specified, the court doth further find, that the said plaintiff has failed to establish any title or right of possession in himself to the premises demanded in his declaration, or any part thereof; that the said de-

fendants have established in him, the said defendant, James M. Cooper, a valid legal title in fee to the whole of said premises so demanded; and the said defendant, the National Mining Company, was at the commencement of this suit lawfully in possession of said premises as a tenant, holding under the said James M. Cooper.

40th. Now, therefore, it is considered and adjudged by the court that the said defendants, the National Mining Company and James M. Cooper, are not guilty of the trespass and ejectment mentioned in the plaintiff's declaration and therein laid to their charge, nor of the withholding from the plaintiff of the possession of the premises also mentioned and described in said declaration and therein laid to their charge, in manner and form as the said plaintiff hath therein complained against them.

And it is therefore further considered and adjudged that the said plaintiff take nothing by his said suit, and that the said defendants do go thereof without day; and it is further considered and adjudged by the court, now here, that the said defendants do recover against the said plaintiff their costs and charges by them about their defence in this behalf laid out and expended, to be taxed, and that the said defendants have execution therefor.

49 *Paper No.* 1.

Be it known that there is hereby granted to Joseph L. Hempstead, of Iowa, full permission for the term of one year from the date of these presents, to examine and dig for lead and other ores on any part of the lands known as the Mineral District, in the region of country lying south of Lake Superior, which was acquired by the United States from the Chippewa Indians, by the treaty with them of the 4th of October, 1842, and ratified on the tenth day of February last, provided that such examination and diggings shall not be made on any tract which may have been selected by any other person or company of persons, acting under the authority of the Secretary of War or of Walter Cunningham, United States agent for the mineral lands.

And if the said Joseph L. Hempstead shall, at any time within the year above mentioned, select a portion or tract of land in said district which he desires to occupy for mining purposes, which portion must be of a square form of four equal sides of not exceeding three miles each, bounded by due east and west and north and south lines, in all cases where the boundary is not determined by said lake or some other sheet of water, or by some other location previously made, and shall, at the time of making such selection, mark the corners thereof, and leave a person in charge so as to point out the selection to other persons seeking to make selections, and shall transmit to the Secretary of War, within said year, a description of the tract so selected, accompanied by a plat of survey of the same, exhibiting he courses and lengths of the exterior lines, together with the name and general course of any river, stream, or other water running through, lying within, or bounding the same, together with

the bearing and distance of the point of beginning of such survey from some well known or easily identified natural permanent object; and shall, moreover, keep a true and faithful account of all the ores of every description which he shall dig or allow to be dug on
50 any portion of said tract from the time of selecting the same to the time of execution of a lease as hereinafter mentioned; and which description shall, moreover, be accompanied by a certificate of the United States agent aforesaid, that such selection does not interfere with any other location made under proper authority; then, in such case a lease will be granted under the seal of the War Department to the said Joseph L. Hempstead for the tract so described, for the term of three years, upon his tendering a satisfactory bond in a sum not less than twenty thousand dollars, conditioned for the faithful performance of the conditions of such lease.

And the lease so to be granted will stipulate that the United States, as party of the first part, may, at any time during the continuance of the lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile, and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy; provided such area or areas shall not include any mine or lode or mineral which is being worked at the time when so selected for occupation. And that the party of the second part shall have full right during the continuance of the lease to dig and take from any part of the lands so leased which are not occupied for military purposes or as a mineral agency, all lead, copper, or other ores which they may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works as may be necessary for the accommodation of themselves, their agents, and workmen, and for the raising of the ores, and extracting metals therefrom; and for these purposes alone may use all such timber, stone, fire-wood, and other fuel as may be necessary, found on those parts of said tract which may not have been selected as aforesaid for military purposes or for a mineral agency. And that said party of the second part will commit no waste, nor suffer it to be committed, and that at
51 the termination of the lease the said tenant or tenants shall have no claim upon the government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises or expenses incurred in their erection.

And in the lease so to be granted, the said party of the second part, for himself, his heirs, representatives, and assigns, will covenant, promise, and agree that the mines, lodes, and deposits of ore discovered or which may be discovered on the land so leased, shall be worked with due diligence and skill; it being fully understood that the motive for granting the lease is that these lands shall be worked for mining purposes, and are not to be held as farming lands; and that all the ores or mineral dug on any part of the land so leased, either by them or others under their permission, shall be smelted

within said district of country acquired by the treaty aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission in each instance from the party of the first part; that they will keep or cause to be kept, in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants, or assistants, and by each person or company of persons whom they may allow to mine or dig on the tract of land so leased, together with a true and full account of all metals extracted from said ores or mineral; and that they will, moreover, make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that party; which returns shall show the quantity of all ores or mineral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or mineral so dug, and which books and returns shall be verified by oath
52 in due form of law, if required by the party of the first part.

And further, that any superintendent or other agent acting under the authority of the party of the first part may reside at, or visit at all times, any or all of the mines, mills, or furnaces on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on upon said land; and that the book or books hereinbefore mentioned shall be at all times open to his inspection.

And the said party of the second part, for himself, his heirs, representatives, and assigns, will further covenant, promise, and agree to pay or cause to be paid semi-annually, (or oftener if required,) as rent to the United States, for the use of the lands so leased, and deliver the same, free of cost, at Fort Brady, on the Sault Ste. Marie, at Copper Harbor, on Point Keweena, at the Ontonagon river, at the La Pointe agency, or other place on the southern shore of Lake Superior, as may be, from time to time, determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased, and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them, by the last refining process to which it may be subjected in said mineral district, and shall be selected of a fair average quality from the better kinds intended by the said lessees for use or sale in market. And further, that they will keep a true account and make returns in manner hereinbefore mentioned, of all the ores or minerals which they may receive for the purpose of smelting, or may purchase from any other person or company mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it and the name of the person or company from whom they may receiv it, and the locality of the mine from which it was dug, and will d

duct and pay over to the agent of the United States, in
53 manner aforesaid, six pounds out of every one hundred pounds of all the metal so extracted; and in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in the lease, that then, in such case, they shall deliver or cause it to be delivered to a smelter duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And the lease so to be granted will further stipulate, that within three months after the expiration of the three years for which the lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract, and surrender peaceable possession of the same, unless they shall within said three months obtain a renewal of said lease as hereinafter provided; and further, that upon the failure of the said party of the second part, his heirs, representatives, or assigns, to conform to and carry into effect any of the promises and agreements above stipulated to be performed by said party of the second part, that the lease shall be void and forfeited, and that said party of the first part may re-enter, take possession of, and lease the above-mentioned tract, or any part thereof, to others. And that upon written notice being served by any authorized agent of the party of the first part, setting forth that said lease is deemed to have been forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives, or assigns, or left on said tract in default of any such person being present, the said party of the second part will, within three months, remove from said tract, and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained
of, or made such explanations as shall have induced the Sec-
54 retary of War, or other officer acting under the authority of said party of the first part, to remit the forfeiture, and to grant them written permission to remain.

And at the end of said three years, if Congress shall not in the mean time have passed a law directing the sale or other disposition of these lands, and the party of the second part shall have fully complied with the conditions set forth in such lease, and shall tender a satisfactory bond in a sum not less than twenty thousand dollars, conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of such lease for the further term of three years, upon the same terms and conditions, except that for such second term of three years the rent stipulated to be paid shall be ten per cent. of the metal extracted. And at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further

term of three years, upon furnishing in same manner a like new bond for the performance of that lease.

Given at Copper Harbor, 5th day of August, in the year of our Lord one thousand eight hundred and forty-four.

(Signed) WALTER CUNNINGHAM,
Mineral Agent, &c.

By virtue of the authority given to me by the foregoing permit, I have selected a tract for the purpose of mining thereon, of which tract the following is a true description: Beginning at a stake on the east bank of the Ontonagon river, directly opposite the point where the west branch of said river enters the main stream, and running
55 thence east three miles; thence north three miles; thence west three miles; thence south three miles to the place of beginning; and pray that a lease may be granted for the same.

Dated at Copper Harbor, this seventh July, 1845.

JOSEPH L. HEMPSTEAD.

I have carefully examined the description of the tract above applied for, and find that it does not interfere with any other location made under proper authority, and I recommend that a lease be granted, as prayed for.

Dated at Copper Harbor, this eleventh day of July, 1845.

JNO. STOCKTON,
Sup. Mineral Lands.

Paper No. 2.

This indenture, made in duplicate, and entered into this sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, between the United States of America, acting herein by William L. Marcy, Secretary of War, of the first part, and Joseph L. Hempstead, of , in the Territory of Iowa, of the second part, witnesseth: that the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, doth, by these presents, and by and with the approbation of the President of the United States, grant, lease, and farm unto the said party of the second part, his heirs, representatives, and assigns, (they being citizens of the United States,) for the full term of three years from the date hereof, a certain tract of land, for the purpose of mining for lead and other ores which may be found thereon, which tract of land hereby leased is situate within the region of country on the southern shore of Lake Superior, and
56 is described as follows, viz: beginning at a stake on the east bank of the Ontonagon river, directly opposite to the point where the west branch of said river enters the main stream, and running thence east three miles; then north three miles; then west three miles; and then south three miles to the place of beginning: to have and to hold the same for the term aforesaid, unto the said party of the second part, his heirs, representatives, and assigns, upon the

following conditions, viz: that the said party of the first part may, at any time during the continuance of this lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half a square mile, and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy; provided such area or areas shall not include any mine or lode of mineral which is being worked at the time when so selected for occupation. And the said party of the second part shall have full right, during the continuance of this lease, to dig and take from any part of the lands hereby leased which are not occupied for military purposes or as mineral agency, all lead, copper, or other ores which they may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works as may be necessary for the accommodation of themselves, their agents, and workmen, and for the raising of the ores and extracting metals therefrom; and for these purposes alone may use all such timber, stone, fire-wood, and other fuel, as may be necessary, found on those parts of said tract which may not have been selected, as aforesaid, for military purposes or for mineral agency. And the said party of the second part covenants that he will commit no waste, nor suffer it to be committed, and that at the termination of this lease the said tenant or tenants shall have no claim upon the government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

57 And the said party of the second part, for himself, his heirs, representatives, and assigns, hereby covenants, promises and agrees, that the mines, lodes, and deposits of ore discovered or which may be discovered on the land hereby leased, shall be worked with due diligence and skill; it being fully understood that the motive for granting this lease is that these lands shall be worked for mining purposes, and are not to be held as farming lands, and that all the ores or mineral dug on any part of the land so leased, either by himself or others under his permission, shall be smelted within the district of country aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission from the party of the first part; and that they will keep or cause to be kept, in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants and assistants, and by each person or company of persons whom they may allow to mine or dig on the tract of land so leased, together with a true and full account of all the metals extracted from said ores or mineral; and that they will, moreover, make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that party; which returns shall show the quantity of all ores or min-

eral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or mineral so dug, and which books and returns shall be verified by oath in due form of law, if required by the party of the first part. And further, that any superintendent or other agent acting under the authority of the party of the first part may reside at, or visit at all times, any or all of the mines, mills, or furnaces on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on
58 upon said land; and that the book or books hereinbefore mentioned shall be at all times open to his inspection.

And the said party of the second part, for himself, his heirs, representatives and assigns, hereby further covenants, promises and agrees to pay or cause to be paid semi-annually, (or oftener if required,) as rent to the United States for the use of the lands so leased, and deliver the same, free of cost, at Fort Brady, on the Sault Ste. Marie, at Copper Harbor, on Point Keweena, at the Ontonagon river, at the La Pointe Agency, or at such other place on the southern shore of Lake Superior as may be from time to time determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased, and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them, by the last refining process to which it may be subjected in said district, and shall be selected of a fair average quality from the better kinds intended by the said lessees for use or for sale in market. And further, that they will keep a true account, and make returns in manner hereinbefore mentioned, of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mine from which it was dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every one hundred pounds of all the metals so extracted. And in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in this lease, that then, in such case, they shall deliver or cause it to be delivered to a smelter duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct
59 therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And it is fully understood and agreed between the parties to this lease, that within three months after the expiration of the three

years for which this lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract, and surrender peaceable possession of the same, unless they shall within said three months obtain a renewal of this lease as hereinafter provided; and further, that upon the failure of the said party of the second part, his heirs, representatives or assigns, to conform to and carry into effect any of the promises and agreements above stipulated to be performed by said party of the second part, that this lease shall be void and forfeited, and that said party of the first part may re-enter, take possession of, and lease the above-mentioned tract, or any part thereof, to others. And it is further understood, that upon written notice being served by any authorized agent of the party of the first part, setting forth that this lease is deemed to have been forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives or assigns, or left on said tract in default of any such person being present, the said party of the second part hereby covenants, promises and agrees, for himself, his heirs, representatives and assigns, that they will within three months remove from said tract, and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War or other officer acting under the authority of said party of the first part to remit the forfeiture, and to grant them written permission to remain.

And the said party of the first part hereby stipulates and agrees, that at the end of said three years, if Congress shall not in the mean time have passed a law directing the sale or other disposition of these lands, and the said party of the second part or their assigns
60 shall have fully complied with the conditions on their part set forth in this lease, and shall tender a satisfactory bond in a sum not less than twenty thousand dollars, conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of this lease for the further term of three years, upon the same terms and conditions, except that for such second term of three years the rent stipulated to be paid shall be ten per cent. of the metal extracted. And at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further term of three years, upon furnishing in same manner a like new bond for the performance of that lease.

In witness whereof, the said Secretary of War, acting for the party of the first part as aforesaid, hath hereunto set his hand, and caused the seal of the War Department to be affixed, and the parties of the

second part have set their hands and seals, the day and year first above written.

JOSEPH L. HEMPSTEAD, [L. S.]
By his Attorney,
JOHN H. KINZIE.

Signed and sealed by
JOSEPH L. HEMPSTEAD,
in presence of
C. K. GREEN,
GEO. C. BATES.
[L. S.] W. L. MARCY.

61 PAPER NO. 3.

Instructions to land officers at Sault Ste. Marie, Michigan.

GENERAL LAND OFFICE, *April* 16, 1848.

GENTLEMEN: I have to call your special attention to the act of 1st March, 1847, establishing the land district, the charge of which has been placed under your care.

The second section of that act requires that the lands in your district shall be separated into two classes, to wit: such as may contain copper, lead, or other valuable ores, the minimum price of which is fixed at five dollars per acre, except to lessees, permittees, and occupants, in whose favor, under certain restrictions, the minimum is reduced to half that sum per acre; and the agricultural lands, or those reported as not containing copper, lead, or other valuable ores, which are directed to be sold in the same manner as other lands, under the laws now in force for the sale of the public lands, excepting and reserving from such sales section sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses; the minimum price of these lands of course is $1 25 per acre. For your guidance and direction in the sales of the latter, full directions have been sent you in the sales of the former; you will be governed by the following directions:

All the lands reported to you by Dr. C. T. Jackson, the gentleman appointed by the Secretary of the Treasury to make a geological examination and survey of your district, as containing copper, lead, or other valuable ores, you will mark upon your township plats, and in the margin of your tract books the letter M, to designate them as mineral lands. Where section sixteen is so reported, and where it is included in the limits of a lease or permit, it will not be reserved for school purposes; in all other cases it will be so reserved.

The Secretary of the Treasury has prescribed the following rules for your government, as to the proof which shall be made to
62 you of the possession and occupancy of the mine or mines claimed by individuals under the third section of this act, and the evidence which shall be received of the payment of all rents due the United States before such persons shall be permitted to enter the land claimed by them, to wit:

1st. Where persons claim under a lease from the Secretary of War, they must produce and file with you the duplicate of their lease.

2. They shall prove to your satisfaction, by the affidavits of two or more disinterested credible witnesses, sustained by their own deposition, that they are in possession of the land described by that lease, by actual occupancy, for the purpose of mining thereon.

3. They shall prove, in like manner, that they have complied with all the conditions and stipulations of said lease, except as to the payment of the rent due the government; on this point, the certificate of the mineral agent that the claimant has paid the whole of the amount due by him to the government, or that no mineral of any value has been raised from the land, and hence there is no rent due, will be sufficient evidence.

4. Persons claiming under a written permit from the Secretary of War shall produce their permits and file them with you.

5. They shall prove, in the manner directed in the second rule above, that they have visible landmarks and muniments, as boundaries, on the lands claimed by them.

6. They shall prove, in like manner, that they have complied with the conditions and stipulations contained in those permits.

7. All persons who shall prove, in like manner, that they are in possession, by actual occupancy, of a mine or mines, actually discovered before the passage of this act, and who shall produce a certificate of the mineral agent that they have paid the same per centum of rents as those who hold under leases, or that no mineral has been raised, and, therefore, that no rent has accrued, shall be permitted to enter and purchase one section of land, and not less, to include such mine or mines, discovered and occupied as aforesaid.

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8. Should any of the claimants be dissatisfied with your decision on their claims, they must state that fact to you, in writing, within ten days after the decision is made, and take an appeal to the Secretary of the Treasury, stating succinctly and distinctly the grounds and reasons for their objections. This appeal you will forward to this office, with all the evidence in the case, accompanied by a report from you of all the facts, and the reasons for your decision.

9. The testimony prescribed in the foregoing rules may be taken before yourselves, a justice of the peace, or notary public; but if before either of the two last-mentioned officers, the age, character, and credibility of the witnesses must be certified by him; the fact that the justice of the peace was duly commissioned and qualified, at the time of taking the depositions, must be certified by the clerk of the proper court, under seal, and the acts of the notary must be attested by his seal.

The price of the land to each individual of these classes of claimants will be two dollars and fifty cents per acre.

The term "occupancy" in this act, and in the second of the foregoing rules, has an important bearing in the cases which may be presented for adjudication; and as it is found in similar connection with

the same term used in the pre-emption acts of 1830 and 1834, the true import of which has caused considerable discussion, I refer you, for a full explanation of that term, to the opinions of the Attorney General of 21st June, 1836, part 2 of Laws, Instructions, and Opinions, page 97, and of 29th March, 1837, same volume, page 108. As the action of this office, in relation to this matter, since those opinions were given, has been based on them, you will also be governed by them.

That you may understand the conditions and stipulations of these leases and permits, proof of a compliance with which is re-
64 quired by the third and sixth of the foregoing rules, blank forms of those leases and permits are herewith enclosed. Cases may arise where the claimants were prevented, prior to the passage of this act, from complying with all the conditions and stipulations of these leases and permits, by the opinion of the Attorney General that they were not authorized by law, and the consequent refusal of the War Department to carry out the system previously established. In all such cases, where you are satisfied that the parties were thus prevented from fully complying with the conditions and stipulations of their leases and permits, you will permit their entries, under the decision in the case of Robert Spiers, part 2, Laws, Instructions, and Opinions, page 639.

Lessees or permittees will not be permitted to relinquish or waive their rights under their leases or permits, and enter as mere settlers. Those leases or permits will be regarded as reserving the land from sale or entry of every kind, except by the parties holding them, until they have expired by the lapse of time or voluntarily surrendered, and if they expire before the day of sale, then till that day, when they will be offered as unclaimed lands.

These lessees or permittees may enter the lands to which they establish a claim, under the rules herein prescribed, at any time during the continuance of such lease or permit, and where they expire before the public sale of the land including their claim, then till the day before the period fixed by the President's proclamation for the commencement of such sale, to the extent of such lease or permit, where the original survey of it, and the lines of the public surveys, are coincident. Where they are not, it has been decided by this office, with the concurrence of the Secretary, as a general principle, that "where the lands of a lease or permit include the greater part of a legal subdivision, the owner of such lease or permit will be required to take the whole of that subdivision; and where the greater part of a subdivision is outside the limits of a lease or permit,
65 that the whole of such subdivision be excluded from that lease or permit, except where the owner of such lease or permit shall thereby be deprived of valuable improvements, when he shall be authorized to take the whole of such subdivision. Should cases arise where the owners of contiguous leases would be injuriously affected by this last principle, and one or the other will be compelled by it to lose a portion of his improvements, preference will be given to the first occupant."

Those settlers whose cases are embraced by the seventh of the foregoing rules can enter the tract to which they establish a right, under that rule, at any time before the day appointed by the President's proclamation for the commencement of the sale of the lands, including such tract. Their entry may either be of a technical section or two contiguous half sections, or four contiguous quarter sections, forming the compact body of the shape and area of a section; and if two or more persons are in possession of the same section, the first occupant shall be entitled to a preference, unless the same can be so divided, by legal subdivisions, as to give each the discovery claimed by him. In this case, quarter-quarter sections will be considered legal subdivisions.

You will write at the top of the certificates issued for any of the before-mentioned claims the words "Lease," "Permit," or "Preemption," as the case may be, "act of 1st March, 1847," and for your services in any one and all of such cases you will each be entitled to a fee of one dollar, to be paid by the claimant on the issuing of the certificates.

The proof in each of these cases will be forwarded to this office with a proper certificate.

In offering these mineral lands at public sale, you will be careful to withhold all legal divisions and subdivisions upon which there may be an outstanding lease or leases from the Secretary of War, unexpired and undetermined, and which are actually occupied for mining purposes, and the occupants of which have complied with all 66 the requisitions of such lease or leases, and continue to perform the same, and where the owners of those leases or permits do not relinquish them, after the public sale, you will report a list of all the lands thus withheld, showing the reason for that action. These lands will be offered in quarter or fractional quarter sections, in the same manner and order as the agricultural lands are offered, and all fractional quarter sections will also be offered separately, whatever may be their area. For all these lands the minimum price will be five dollars per acre. On the top of all the certificates issued for any of these lands you will write the words "mineral act of 1st March, 1837," and also "public sale," when they are so sold; when they are sold at private entry, the words "public sale" will be omitted.

Should you have good and sufficient reason to believe, or are credibly informed, that combinations have been formed to prevent fair competition at the public sales, you will notify the offending parties of the provisions of the 4th and 5th sections of the act of 31st March, 1830, part 1, Laws, Instructions, and Opinions, page 46; and if the offence is continued or renewed, you will immediately stop the sale, and ascertain, as far as practicable, the names of the offenders, and their places of residence, that they may be prosecuted under that law.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

REGISTER AND RECEIVER,
Sault Ste. Marie, Michigan.

67 PAPER NO. 4.

Instructions to the land officers at Sault Ste. Marie, Michigan.

GENERAL LAND OFFICE, *April* 25, 1848.

GENTLEMEN: In the instructions from this office of the 16th instant, proof of a compliance with the conditions and stipulations of leases and permits, with visible landmarks and muniments as boundaries to the latter, are required of lessees and permittees, as prerequisites to entries under the law, at the reduced minimum of $2 50 per acre. On examining the leases, you will perceive that the first condition specified therein, which seems to come within the purview of the law and those instructions, is that "the mines, &c., shall be worked with due diligence and skill," and the second is the payment of the rent.

In relation to the first of these conditions, I would suggest that, after the opinion of the Attorney General, given on the 18th April, 1846, that these leases were unauthorized by law, and the consequent refusal of the Secretary of War to carry out the regulations previously prescribed, some of the lessees did not work the mines. In such cases the Secretary of the Treasury concurs in the opinion of this office, that the lessees should be permitted to enter to the extent of their lease, as set forth in your instructions, where the rent has been paid, as set forth in the second condition and the following instructions.

The Secretary of the Treasury also concurs in the opinion of this office, that lessees and permittees, who desire to purchase the lands embraced by their leases and permits, should not be required to pay rent after the time, when, according to the terms of the act of 1st March, 1847, they could have done so, had the necessary facilities been furnished by the government, by fixing the land office and appointing the land officers. Hence, the mineral agent was this day instructed to settle with the lessees and permittees, up to the
68 close of navigation in 1847, for all the ore and mineral raised up to that time, and require rent therefor, and for all raised since to require a bond to be given for the amount of rent, which will be cancelled upon the entry by the lessee or permittee of the land claimed by him before the day fixed by the President's proclamation for the commencement of the sale, including those lands.

Where permittees, for similar reasons to the foregoing, have given the best designation practicable to the location of their permits, with reference to natural objects, leases, &c., with the lengths and courses of their boundaries, it will be considered sufficient as to the requirement of the law, of fixed landmarks and muniments. The other stipulations are similar to those of the leases, and will be similarly construed, as above directed.

In all cases where persons applied for leases, and failed to obtain them, because of the decision of the Attorney General, and the consequent refusal of the Secretary of War to carry out the previous regulations, the persons who so applied will be considered as entitled

to the same rights and privileges exactly as if they had obtained them.

The books of the mineral agent will enable you to ascertain all such cases, but should persons apply, in relation to whom there is no such evidence, you will receive their application, and hold it in abeyance till you can get information from this office in relation to it.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

REGISTER AND RECEIVER,
At Sault Ste. Marie, Michigan.

69 PAPER NO. 5.

LAND OFFICE AT SAULT STE. MARIE, *November* 6, 1850.

I, Enoch C. Roberts, president and director of the Minnesota Mining Company, of New York, do hereby apply to purchase for said company, the e. half of the s. e. qr. sec. nine; the south half of section ten; the south half of section eleven; the southwest qr. and west half of s. e. qr. section twelve; the west half and the west half of n. e. and s. e. qrs. sec. 13; sections fourteen and fifteen; east half of n. e. and s. e. qrs. section sixteen; e. half of n. e. and s. e. qrs. of section 21; sections twenty-two and twenty-three; west half and the west half of n. e. and southeast qrs. section twenty-four; n. west qr. and west half of n. e. qr. sec. twenty-five; north half section 26 and 27; lots No. 1 and 5 of sec. 28, in township No. 50 north, of range 39 west; containing five thousand seven hundred and fifty-five and sixty-hundredths acres, according to the returns of the surveyor general, for which I have agreed with the register to give at the rate of one dollar and twenty-five cents per acre.

(Signed) ENOCH C. ROBERTS.

PAPER NO. 6.

To the Commissioner of the General Land Office, Washington.

RECEIVER OFFICE, SAULT STE. MARIE, MICHIGAN,
June 28, 1851.

I hereby certify that Mr. E. C. Roberts, as agent for the Minnesota Mining Company, of Michigan, did apply to me, as receiver of the land office, on or about the sixth day of November last, to purchase their location, and submitted to me their proofs, and all the necessary papers for that purpose; but was advised by me that he could not prove up their lease and make payment for the same, the land office then being closed for the want of a register.

HENRY ACKER, *Receiver.*

70 PAPER NO. 7.

DEPARTMENT OF INTERIOR, *September* 10*th*, 1851.

SIR: I have examined the claim of the State of Michigan, under the compact for her admission into the Union, *vs.* certain lessees under

the act of 1st March, 1847, to sections numbered 16, which were the subject of your report to me of the 16th of June last.

The first proposition in the act of Congress of June 23d, 1836, for the admission of Michigan into the Union as a State is, "that section numbered 16 in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

This, with the other propositions of the act of June 23d, 1836, were to be "offered to the legislature of the State of Michigan for their acceptance or rejection," "and if accepted, under the authority conferred on the said legislature by the convention which formed the constitution of the State," were to be "obligatory on the United States."

These propositions were accepted, and the irrevocable ordinance required by the 5th proposition was provided by an act of the legislature of Michigan, approved the 25th July, 1836. On the 1st March, 1847, Congress passed "An act to establish a land office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan." The second section of that act requires that a geological examination and survey of the lands comprising this new land district should be made, and that such lands as might be found to contain copper, lead, or other valuable ores, to be exposed for sale, giving six months' notice of the time and place, and that all the lands embraced in said district not reported as containing valuable ores "should be sold in the same manner as other lands," under the laws then in force for the sale of public lands, "excepting and reserving from such sales section 16 in each township
71 for the use of schools, and such reservations as the President shall deem necessary for public uses."

This third section provides that all persons who are in possession by actual occupancy of any portion of the district described in the first section, whether under authority of a lease or permit from the Secretary of War or not, for the purpose of mining thereon, may purchase the same under certain conditions and restrictions.

Under the law of 1st March, 1847, a part of sections 16, in townships 50 and 58 n., of ranges 39 and 30 west, respectively, is claimed under a lease from the Secretary of War, while the State claims under the first proposition of the act of 23d June, 1836, for her admission into the Union."

The questions which arise in this case are purely legal, being as to the proper construction of the acts of 1836 and 1847. The first proposition of the act of June 23d, 1836, which was accepted by the State of Michigan, and thereby became obligatory upon the United States, is in these words: "That section numbered 16, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

You contended that this language does not amount to a present grant, and that its true meaning and intent are, that section 16 in every township, which upon being surveyed shall be found not to have been sold or otherwise disposed of, shall be granted for the use of schools. In this I do not concur. I regard it as an absolute grant of every 16th section, which had not on the 23d June, 1836, been sold or otherwise disposed of, whether then designated by survey or not; and the fact that the same language was used in the admission of Ohio into the Union, in 1802, and in the admission of all the other States subsequent to that time, has passed to the States title to sections 16, without further legislation. The issuing of a patent,
72 or other action by the General Land Office, shows that it has always been regarded as a present grant.

It is also contended that this construction of the act of 1836 will render the act of 1st March, 1847, nugatory; that the act of 1847 grants certain privileges to and confers certain rights upon occupants of these mineral lands; and that under Attorney General Legare's opinion, of 29th April, 1842, the Executive is bound to execute a law of Congress, where the will of that body is clearly expressed, even though the provisions of that law are inconsistent with previous legislation.

Where a law of Congress is clearly inconsistent with prior legislation, I agree with Mr. Legare that the Executive is bound to execute it; but in construing the subsequent law we must construe them as statutes upon the same subject in *pari materia*, and, if possible, make them harmonize so that Congress may not be charged with injustice or absurdity. But I do not regard the act of 1847 as inconsistent with that of 1836, nor as containing language sufficiently ambiguous to give rise to serious doubts as to its true intent and meaning.

The act of 1836 had granted to the State all sections numbered 16 which had not then been sold or otherwise disposed of; and it would not have been constitutional or just in Congress, in 1847, to violate that law or annul the grant made by solemn compact with the State; and the concluding portion of the 2d section of the act of 1st March, 1847, was designed, in my opinion, to exclude from its operation all 16th sections, and such reservations as the President might deem necessary for public uses, whether such sections or reservations were mineral or agricultural lands.

Without going further into the subject, it being deemed unnecessary, your decision of the 22d April last, adverse to the claim of the State of Michigan to the 16th sections in the mineral region, is reversed, and the papers which were submitted with your letter of the 16th June last are hereby returned.

I am, etc.,

(Signed) A. H. H. STUART, *Secretary*.

COMMISSIONER GENERAL LAND OFFICE.

73 PAPER NO. 8.

LAND OFFICE, SAULT STE. MARIE,
November 10, 1851.

HON. J. BUTTERFIELD, *Commissioner, &c.*—SIR: The Minnesota Mining Company having applied to this office to enter the lands covered by lease No. seventy-eight, under protest as to their right to the portion of section No. 16, claimed by them, being the east half of the northeast and the east half of the southeast quarters of said section, and we being fully satisfied by the proofs submitted to us in support of their claim, of its validity under the law, have allowed the entry in the corporate name of said company of the lands within the limits of said lease, to the extent claimed by them, excepting section 16. One of the papers connected with their proof being a conveyance from the Ontonagon Mining Company, to Clement March, of one-half of said leased lands, which has been on file in this office, but was returned to the agent for the purpose of correction, has miscarried or been lost as is supposed in transmission. As the conveyance has been once upon file, we did not think proper to withhold the entry on this account, being advised that the company will supply the defect, if the document is not soon found, by other proof, or proof of loss, at the General Land Office.

Very respectfully, your obedient servant,
(Signed) ANDREW BACKUS, *Register.*
HENRY ACKER, *Receiver.*

PAPER NO. 9.

DEPARTMENT OF THE INTERIOR,
Washington, February 4, 1852.

SIR: In order that their clients may have a standing in court, to test their title with any adverse party claiming under the State of Michigan, Messrs. Eldridge, Platt and Stewart have made
74 application to me, by way of appeal from your decision of the 15th December last, for permission to enter that portion of section 16 in township 50 north, of range 39 west, Sault Ste. Marie, Michigan, covered with other lands by mining lease No. 78.

While I adhere to and reaffirm the views expressed in my decision of the 10th of September last, with respect to the validity of their claim to said section 16, I have consented that the entry shall embrace all the land covered by the lease, but that no patent shall be issued without a reservation of the right of the State of Michigan to the disputed portion of section 16, covered by the lease, and you will please instruct the land officers at Sault Ste. Marie accordingly.

I am sir, very respectfully, your ob't serv't,
(Signed) A. H. H. STUART,
Secretary.

TO THE COMMISSIONER OF THE GENERAL LAND OFFICE.

PAPER NO. 10.—*Certificate No.* 941.

The United States of America to all to whom these presents shall come, greeting:

Whereas the Minnesota Mining Company, of Michigan, has deposited in the General Land Office of the United States a certificate of the register of the land office at Sault Ste. Marie, whereby it appears that full payment has been made by the said Minnesota Mining Company, according to the provisions of the act of Congress of the 1st March, 1847, entitled "An act to establish a land office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan," and the act of Congress of the 26th September, 1850, entitled "An act to reduce the minimum price of the mineral lands in the Lake Superior district in Michigan, and in the Chippewa district in Wisconsin," for the east half of the southeast quarter of section nine; the south half of section ten; the south half
75 of section eleven; the southwest quarter and the west half of the southeast quarter of section twelve; the west half, the west half of the northeast quarter and the west half of the southeast quarter of section thirteen; the sections fourteen and fifteen; the east half of the northeast quarter and the east half of the southeast quarter of section twenty-one: the sections twenty-two and twenty-three; the west half, the west half of the northeast quarter and the west half of the southeast quarter of section twenty-four; the northwest quarter and the west half of the northeast quarter of section twenty-five; the north half of sections twenty-six and twenty-seven; the lots numbered one and five of section twenty-eight, and the east half of the northeast quarter and the east half of the southeast quarter of section sixteen, in township fifty north, of range thirty-nine west, in the district of lands subject to sale at Sault Ste. Marie, Michigan, containing five thousand seven hundred and ninety-four acres and eighty-hundredths of an acre; being the lands included in the original survey of lease number seventy-eight, as near as may be, conforming to the lines of the public surveys of sections and subdivisions thereof, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tracts have been purchased by the said Minnesota Mining Company: Now know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, having given and granted, and by these presents do give and grant, unto the said Minnesota Mining Company, and to their assigns, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Minnesota Mining Company, and to their assigns forever, reserving any right which the State of Michigan may have in and to the east half of the northeast quarter and the east half of the southeast quarter of
76 section sixteen, in township fifty north, of range thirty-nine west, above described, under or by virtue of the provisions of the first section of the act of Congress of 23d June, 1836, entitled

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75 of section eleven; the southwest quarter and the west half of the southeast quarter of section twelve; the west half, the west half of the northeast quarter and the west half of the southeast quarter of section thirteen; the sections fourteen and fifteen; the east half of the northeast quarter and the east half of the southeast quarter of section twenty-one: the sections twenty-two and twenty-three; the west half, the west half of the northeast quarter and the west half of the southeast quarter of section twenty-four; the northwest quarter and the west half of the northeast quarter of section twenty-five; the north half of sections twenty-six and twenty-seven; the lots numbered one and five of section twenty-eight, and the east half of the northeast quarter and the east half of the southeast quarter of section sixteen, in township fifty north, of range thirty-nine west, in the district of lands subject to sale at Sault Ste. Marie, Michigan, containing five thousand seven hundred and ninety-four acres and eighty-hundredths of an acre; being the lands included in the original survey of lease number seventy-eight, as near as may be, conforming to the lines of the public surveys of sections and subdivisions thereof, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tracts have been purchased by the said Minnesota Mining Company: Now know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, having given and granted, and by these presents do give and grant, unto the said Minnesota Mining Company, and to their assigns, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Minnesota Mining Company, and to their assigns forever, reserving any right which the State of Michigan may have in and to the east half of the northeast quarter and the east half of the southeast quarter of
76 section sixteen, in township fifty north, of range thirty-nine west, above described, under or by virtue of the provisions of the first section of the act of Congress of 23d June, 1836, entitled

"An act supplementary to the act entitled 'An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions.'"

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the ninth day of April, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-sixth.

[SEAL.]

(Signed) MILLARD FILLMORE.

By the President: (Signed) ALEX. McCORMICK,
Ass't Secretary.

Recorded in Miscellaneous Patents, vol. 3, on pages 72, 73 and 74.
JOS. S. WILSON,
Acting Recorder of the General Land Office ad interm.

PAPER NO. 11.

Circuit court of the United States for the seventh circuit and district of Michigan.

[L. S.] The President of the United States of America to the marshal of the district of Michigan, greeting:

Whereas James M. Cooper has lately, in the said circuit court of the United States for the seventh circuit and district of Michigan, by the judgment of said court, recovered against Enoch C. Roberts possession of the lands and premises described as situated in the county of Ontonagon and State of Michigan, and being the east half of the northeast quarter of section sixteen, in township number fifty
77 (No. 50) north, of range number thirty-nine (No. 39) west; and the east half of the southeast quarter of same section, township and range, containing together one hundred and sixty acres, more or less, excepting and reserving from the same two tracts of land, parcels of said premises, containing twenty-two and a half acres each; which said two tracts thus excepted and reserved are described as follows, to wit: one tract beginning at the southeast corner of said section, and running thence west forty (40) rods; thence north ninety (90) rods; thence east forty (40) rods; thence south ninety (90) rods, to the place of beginning; and the said other tract excepted and reserved as aforesaid, beginning at the northeast corner of said section, and running thence west ninety (90) rods; thence south forty (40) rods; thence east ninety (90) rods; thence north forty (40) rods, to the place of beginning; which said premises have been and still are unjustly withheld from the said James M. Cooper by the said Enoch C. Roberts, whereof he is convicted as appears to us of record, and for as much as it is adjudged in the said court that the said James M. Cooper have execution upon his said judgment against

the said Enoch C. Roberts, according to the force, form, and effect of his said recovery: Therefore we command you that, without delay, you deliver to the said James M. Cooper possession of the said premises so recovered, with the appurtenances, and that you certify to the said circuit court of the United States for the seventh circuit and district of Michigan, on the first Monday of September next ensuing, in what manner you shall have executed this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this eighth day of June, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the eighty-second.

(Signed) JNO. WINDER, *Clerk.*

78 In the circuit court of the United States for the district of Michigan.

DISTRICT OF MICHIGAN, *ss:*

By virtue of the within writ, to me directed, on this fourteenth (14) day of June, A. D. 1858, I proceeded to and went upon the premises described in said writ, whereof I was thereby commanded to deliver possession unto James M. Cooper, named therein, and I did then and there deliver unto said James M. Cooper full and actual possession of all said premises, with the appurtenances, as in said writ ordered and commanded; and I do hereby make this my return of my doings under and by virtue of said writ. Witness my hand at Detroit, in the district of Michigan, this 14th day of June, A. D. 1858.

(Signed) ROBERT W. DAVIS,
United States Marshal, District of Michigan.

PAPER NO. 12.

In the name of the people of the State of Michigan. to all to whom these presents shall come, greeting:

Whereas Alfred Williams, of the county of Oakland, Michigan, on the 25th day of February, in the year one thousand eight hundred and fifty-one, purchased from the State of Michigan the lands hereinafter described, pursuant to the laws of said State then in force, and in such case made and provided:

And whereas the said Alfred Williams has paid for said lands, pursuant to the conditions of said sale and the laws of the State duly enacted in relation thereto, the sum of two thousand five hundred and sixty dollars, and all legal interest thereon accrued, as fully appears by the certificate of the proper officer, now on file in the office of the secretary of state of the State of Michigan, being certificate No. 3192 for primary school lands:

Now therefore, I, John S. Barry, governor of said State, in
79 consideration of the premises, and by virtue of the power and authority vested in me by the laws of the said State in such

cases made and provided, do issue this patent, in the name and by the authority of the people of the State of Michigan, hereby granting and confirming unto the said Alfred Williams, and to his heirs and assigns forever, the following piece or parcel of land, situate in the State aforesaid, to wit: the entire of section No. sixteen (16,) in township No. 50 north, of range number thirty-nine (39) west, containing six hundred and forty acres, according to the returns of the surveyor general: to have and to hold the above described and granted premises unto the said Alfred Williams, and to his heirs and assigns, to his and their sole and only proper use, benefit and behoof forever, as provided by the laws of said State, against the lawful claim or claims of all persons whatsoever.

In testimony whereof, I have caused these letters to be made patent, and the great seal of the State to be hereunto affixed.

Given under my hand at Lansing, this thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States of America the seventy-sixth.

[SEAL.] (Signed) JOHN S. BARRY.

By the governor:

ROEL R. GIBSON,
Deputy Secretary of State.

Recorded, Book F, page 479.

REGISTER'S OFFICE, *Ontonagon County, ss:*

Received and recorded this 7th day of September, 1861, at 12 o'clock m., in liber "C" of Deeds, pages 643 and 644.

(Signed) D. PITTMAN,
Register.

80 PAPER No. 13.

This indenture, made the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-two, between Alfred Williams and Frances L. Williams, his wife, of Pontiac, Oakland county, Michigan, of the first part, and James M. Cooper, of Pittsburg, Pennsylvania, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do hereby remise, release, and forever quit-claim unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate in the county of Ontonagon and State of Michigan, known and described as section number sixteen (16,) in township number fifty (50) north, of range number thirty-nine (39) west, containing six hundred and forty acres, according to the returns of the surveyor general, excepting and reserving, however, from the said section, two tracts described as follows, viz: The first tract beginning at the southeast corner of said section six

teen (16,) and running thence west forty (40) rods, thence north ninety (90) rods, thence east forty (40) rods, thence south ninety (90) rods, to the place of beginning, containing twenty-two and a half acres of land, now occupied by the Peninsula Mining Company. And the second tract beginning at the northeast corner of said section sixteen (16,) running thence west forty (40) rods, thence south ninety (90) rods, thence east forty (40) rods, and thence north ninety (90) rods to the place of beginning, containing also twenty-two and a half acres of land. Said two tracts having been heretofore conveyed to the Minnesota Mining Company; but there having been in the conveyance of the same, reserved from said second tract, the rights to all mines or minerals now discovered, or that may hereafter be discovered therein, and the right of working the same,
81 provided such mining operation shall not incommodate the working of the engines and mills of the Minnesota Mining Company on said second tract, or obstruct the stream of water thereon on which their stamp and saw mills are situated, it is intended and hereby provided that this instrument shall convey all the rights and interests so reserved from said second tract, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above released premises, with the said hereditaments and appurtenances: to have and to hold the said lands and premises, with the appurtenances, to the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. In witness whereof, the said party of the first part have hereunto set their hands and seals, the day and year first above written.

ALFRED WILLIAMS. [L. S.]
FRANCES L. WILLIAMS. [L. S.]

Signed, sealed, and delivered in presence of—

CHARLES LIVINGSTON DIBBLE, for Alfred Williams,
JAMES V. CAMPBELL,
E. H. WHITNEY,
DEBORAH K. PHELPS.

STATE OF MICHIGAN, *Wayne County, ss:*

On this nineteenth day of May, one thousand eight hundred and fifty-two, before me, a notary public for said county, personally
82 came the above named Alfred Williams, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

CHARLES LIVINGSTON DIBBLE,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Oakland, ss:*

On this twenty-second day of May, in the year one thousand eight hundred and fifty-two, before me, a notary public, in and for said county of Oakland, personally appeared *before me* Frances L. Williams, the wife of the within named Alfred Williams, known to me to be the person who executed the within instrument, and on a private examination, separate and apart from her said husband, she acknowledged that she executed the same freely, and without any fear or compulsion of or from her said husband, or any other person.

(Signed) EDWIN A. WHITNEY,
Notary Public in and for Oakland County, Mich.

REGISTER'S OFFICE, *Houghton County, ss:*

Received for record this 28th day of June, A. D. 1852, at 9 o'clock a. m., and recorded in book No. 1 of Deeds, pages 237 and 238.

(Signed) JUSTIN SHAPLEY, *Register.*

REGISTER'S OFFICE, *Ontonagon County, ss:*

Received and recorded this 7th day of September, 1861, at 2 o'clock p. m., in liber "C" of Deeds, pages 644 and 645.

(Signed) D. PITTMAN.
Register.

83 PAPER NO. 14.

Alfred Williams and wife to Minnesota Mining Co.

This indenture, made the fourth day of November, in the year eighteen hundred and fifty-one, between Alfred Williams and Frances L. Williams, his wife, of Pontiac, Oakland county, Michigan, of the first part, and the Minnesota Mining Company, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of eight thousand dollars to them in hand paid by the said Minnesota Mining Company, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quit-claim unto the said Minnesota Mining Company, their successors, assigns, and heirs of such assigns, forever, all such rights, title, interest, claim, or demand as the said party of the first part have or may acquire from the State of Michigan before the delivery of this deed, or from any other quarter, in and to those two certain tracts or parcels of land situated on and being parts and parcels of section sixteen (16,) in township number fifty (50) north, of range number thirty-nine (39) west, within the land district of the Sault Ste. Marie, in said State of Michigan, and bounded and described respectively as follows, viz: The first tract beginning at the southeast corner of said section 16, and running thence west forty rods; thence north ninety rods; thence east forty rods, and thence south ninety rods to the place of beginning, containing twenty-two and one-half acres of land, now occupied by the Peninsula Mining Company. And the second tract, beginning at the northeast corner of said section 16, running thence west forty rods; thence south ninety rods; thence

east forty rods, and thence north ninety rods to the place of beginning, containing also twenty-two and one-half acres of land; reserving, however, on the said last described tracts the right to all mines or minerals now discovered or that may hereafter be discovered thereon, and the right of working the same, provided that such mining operations shall not incommode the work-
84 ing of the present steam-engine, stamp-mill, and saw-mill of the Minnesota Mining Company on said tract, nor obstruct the stream of water on which said stamp and saw mill are situated, to the detriment of said Minnesota Company: to have and to hold the said premises, with all the appurtenances thereof, unto the said Minnesota Mining Company, their successors and assigns, and the heirs of such assigns, forever, so that neither the said Alfred Williams, nor his said wife, nor their heirs, nor any person under them or either of them, shall hereafter have any claim, right, or title, in or to the premises, or any part thereof, but therefrom shall be forever excluded. And Mr. John Bacon is hereby authorized to deliver this deed to the Minnesota Mining Company, after he shall have acquired in name of the said Alfred Williams all the right, title, and interest, if any, which the State of Michigan has in said premises, to the end that this indenture may operate upon and transfer the same to said company. And the said Williams hereby covenants, that at any time when requested thereto, after he shall have acquired such title, he will execute and cause to be executed to said Minnesota Mining Company any further conveyance or assurance which may be deemed necessary for conveying and assuring to said company the title derived from such conveyance of the State to him of the above described premises.

In witness whereof, the said party of the first part have hereunto set their hands and seals this fourth day of November, A. D. 1851.

(Signed) ALFRED WILLIAMS. [SEAL.]
(Signed) FRANCES L. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
WILLIAM W. PHELPS.
LEDUC W. PHELPS.

STATE OF MICHIGAN, *County of Oakland, ss:*

On this fourth day of November, one thousand eight hundred and fifty-one, before me, a notary public in and for said county,
85 personally came the above-named Alfred Williams and Frances L. Williams, his wife, and acknowledged the above instrument, by them executed, to be their free act and deed; and the said Frances L., wife of said Alfred Williams, being by me examined separate and apart from her said husband, acknowledged that she executed the said instrument without any fear or compulsion from any one.

(Signed) WILLIAM W. PHELPS,
Notary Public, Oakland Co., Michigan.

86

87 State of Michigan—supreme court, at Detroit.

THE MINNESOTA MINING COMPANY, plaintiffs in error,
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER, defendants in error.

The plaintiffs in error, by S. T. Douglass, their attorney, say that in the record and proceedings in this case, and in the giving of the said judgment, there is manifest error in this, to wit:

1st. In reference to the deed of Williams and wife to Cooper, being Paper No. 13, attached to the court's finding, in connexion with the deed of Williams and wife to the Minnesota Mining Company, being Paper No. 14, the court erred in deciding that there was an ambiguity in the terms of said first-mentioned deed, and also in the terms of said latter deed.

2d. The court erred in deciding that such ambiguity was disclosed and established by the parol evidence in the case.

3d. The court erred in admitting evidence to fix the description and boundaries of the premises conveyed by said deeds, contradictory of the lines, boundaries, and unambiguous descriptions specifically set forth in them, and in accordance with the supposed intention of the parties as sought to be shown by extrinsic and parol evidence.

88 4th. The court erred in admitting the evidence as to the intention of the parties to the said deed from Williams and wife to the Minnesota Mining Company, to convey the stamp-mill, saw-mill, engines, and water-course, according to the boundaries as found by the court, in contradiction of those specified in the deed.

5th. The court erred in deciding that according to the terms and effect of such deeds of Williams and wife to said Cooper, and of Williams and wife to the Minnesota Mining Company, and the intentions of the parties to said deeds, the true boundaries by courses and distances of the said tract of 22½ acres in the northeast corner of said section are as follows, viz: Beginning at the northeast corner of said section 16, running thence west ninety (90) rods; running thence south forty (40) rods; running thence east ninety (90) rods; and running thence north forty (40) rods to the place of beginning; that said tract thus bounded will include on it the objects described as aforesaid in said deed; that the reservation made by said deed to the Minnesota Mining Company, and afterwards conveyed to said Cooper, is a reservation in said thus bounded tract of 22½ acres; and that the west boundary line of said tract of 22½ acres, running south forty (40) rods, as aforesaid, and the south boundary line of said tract, running east ninety (90) rods, as aforesaid, form part of the true and correct boundaries of the premises conveyed to said Cooper in said deed of Williams and wife to him, said Cooper.

6th. The court erred in deciding that the premises in fact conveyed to said Cooper by said deed of Williams and wife to him, said Cooper, include the whole of said section 16, excepting therefrom

the aforesaid tract of 22½ acres in the southeast corner of said section; and also excepting the aforesaid tract of 22½ acres in the northeast corner of said section, having the boundaries by courses and distances herein above found by this court to be the true and correct boundaries thereof; and that the reservation conveyed by said deed to Cooper is in fact a reservation in such second
89 excepted tract of 22½ acres in the northeast corner of said section, according to the true and correct boundaries thereof, as herein above found by the court.

7th. The court erred in rejecting the deposition of Porter Kibbee as first offered, to show that at the time of the sale by him of said section 16, he was induced by fraudulent representations to make such sale.

8th. The court erred in subsequently rejecting said deposition and the testimony offered in connexion with it, as tending to show the time when the State of Michigan first actually asserted any title to the land in controversy.

9th. The court erred in deciding that the plaintiff had failed to establish any title or right of possession in himself to the premises demanded in his declaration, or any part thereof; that the said defendants had established in him, the said defendant James M. Cooper, a valid legal title in fee to the whole of said premises so demanded; and the said defendant, the National Mining Company, was at the commencement of this suit lawfully in possession of said premises as a tenant, holding under the said James M. Cooper.

10th. The court erred in deciding that the said defendants, the National Mining Company and James M. Cooper, are not guilty of the trespass and ejectment mentioned in the plaintiffs' declaration, and therein laid to their charge, nor of the withholding from the plaintiffs of the possession of the premises also mentioned and described in said declaration, and therein laid to their charge, in manner and form as the said plaintiffs hath therein complained against them.

11th. The court erred in deciding that the plaintiffs take nothing by his suit.

12th. The court erred in deciding that the defendants recover against the plaintiffs their costs and charges.

13th. The finding of the court does not support the judgment.

90 14th. In the said record, and also in giving of the said judgment, there is manifest error in this, to wit: that by the record aforesaid, it appears that the said judgment, in form aforesaid, was given for the said National Mining Company and the said James M. Cooper, against the said Minnesota Mining Company; whereas, by the law of the land, judgment in the said plea ought to have been given for the said Minnesota Mining Company against the said National Mining Company and the said James M. Cooper; and they, the said Minnesota Mining Company, pray that the said judgment for this error and others in the said record and process may be reversed, annulled, and entirely set aside, and that they, the said Minnesota

Mining Company, may be restored to all that they have lost by the said judgment, and that the said National Mining Company and the said James M. Cooper may rejoin to the said errors, &c.

SAMUEL T. DOUGLASS,
Attorney for Plaintiffs.

91 The case came on to be heard before the supreme court of the State of Michigan, at the city of Detroit, on the above-named record and papers, upon the 26th day of November, A. D. 1862, and the argument was continued on the 28th and 29th days of said November, when the case was submitted for decision.

Afterwards, on the 13th day of January, A. D. 1863, at a session of said supreme court, held at the city of Lansing, in the State of Michigan, the following order was made:

At a session of the supreme court of the State of Michigan, held at the supreme court-room, in the city of Lansing, on the thirteenth day of January, A. D. 1863.

Present: The honorable George Martin, chief justice; Randolph Manning, Isaac P. Christiancy, James V. Campbell, associate justices.

THE MINNESOTA MINING COMPANY
vs.
THE NATIONAL MINING COMPANY.

92 Error to the district court of the Upper Peninsula for the county of Ontonagon.

This cause having been heretofore argued and submitted, it is now ordered and adjudged that the judgment of the district court of the Upper Peninsula for the county of Ontonagon be, and the same is hereby, in all things affirmed.

And it is further ordered and adjudged that the said defendants in error do recover of and from the said plaintiff in error his costs and the costs of this court to be taxed, and to have execution therefor.

Said order was transmitted to the office of the clerk of said supreme court, at Detroit, and was filed and entered in the records of the case in said office on the seventeenth day of January, 1863.

Afterwards, on the 19th August, 1863, the following petition for a writ of error was filed in this court:

93 To the honorable George Martin, chief justice of the supreme court of Michigan:

The petition of the Minnesota Mining Company, a body corporate in the State of Michigan, respectfully shows: That heretofore the petitioner commenced an action of ejectment in the district court of the Upper Peninsula for the county of Ontonagon, against the National Mining Company and James M. Cooper, to recover possession of a tract of land in said county.

Both parties claimed under acts of the Congress of the United

States, and the decision of the said district court was against the right and title claimed by the petitioner, and in the said suit the construction of said statutes was drawn in question.

A writ of error was taken to the supreme court of Michigan, being the highest court of law in said State wherein a decision could be had, and, after argument, said supreme court gave its decision affirming the judgment of the said district court, and deciding against the construction of the statutes of Congress as claimed by the petitioner, and against the titles and rights set up and claimed under said
94 statutes. Said decision and the judgment thereon are final. They were given within the last year. All of which appears of record, now remaining in this supreme court.

Your petitioner feels aggrieved by this decision, and applies for a writ of error to the Supreme Court of the United States, for the purpose of reviewing and correcting it.

And your petitioner shall ever pray.

Detroit, July 21st, 1863.

THEODORE ROMEYN,
Att'y for Petitioner.

On the same day the bond was filed and the writ of error issued, as hereinbefore set forth.

95 Supreme court of the State of Michigan, sitting at Detroit.

THE MINNESOTA MINING COMPANY, plaintiff in error,
v.
THE NATIONAL MINING COMPANY and JAMES M. COOPER, defendants in error.

STATE OF MICHIGAN,
County of Wayne and City of Detroit, ss:

I, Jared Patchin, clerk of the supreme court for the State of Michigan, sitting at Detroit, do hereby certify that the above and foregoing are the original writ of error in this case and the original citation upon it, and that the other papers are correctly taken and copied from the original papers and entries on record in this case; that such papers and records are in my office and under my care and custody; that the foregoing have been examined and compared by me
96 with the originals, of which they purport to be copies, and that the foregoing transcript is correct and of the whole of what it purports to be a transcript.

In testimony whereof, I have hereunto set my hand and the seal of said court, at Detroit, this fourth day of November, A.
[SEAL.] D. 1863.

JARED PATCHIN,
Clerk of the Supreme Court of the State of Michigan, at Detroit.

97 Supreme Court of the United States of America.

THE MINNESOTA MINING COMPANY, pl'ffs in error,
v.
THE NATIONAL MINING COMPANY and JAMES M. COOPER, def'ts in error.

Assignment of errors.

The plaintiffs in error, by Theodore Romeyn, their attorney, say that in the records and proceedings in this case, and in the giving of the judgment, there is manifest error in this, to wit:

1st. The court erred in so construing the statutes of the United States as to decide that the plaintiffs had failed to establish in themselves any title or right of possession to the premises demanded in their declaration, or any part thereof, and that the said defendants had established in the defendant James M. Cooper a valid legal title in fee to the whole of said premises so demanded; and that the
98 defendant, the National Mining Company, was at the commencement of this suit lawfully in possession of said premises as a tenant, holding under the said James M. Cooper.

2d. The court erred in rejecting the deposition of Porter Kibbee as first offered, to show that at the time of the sale by him of said section 16, he was induced by fraudulent representations to make such sale.

3d. The court erred in subsequently rejecting said deposition and the testimony offered in connection with it, as tending to show the time when the State of Michigan first actually asserted any title to the land in controversy.

4th. The court erred in deciding that the plaintiffs had failed to establish any title or right of possession in themselves to the premises demanded in their declaration, or any part thereof; that the said defendants had established in him, the said defendant, James M. Cooper, a valid legal title in fee to the whole of said premises so demanded; and the said defendant, the National Mining Company, was at the commencement of this suit lawfully in possession of said
99 premises as a tenant, holding under the said James M. Cooper.

5th. The court erred in deciding that the said defendants, the National Mining Company and James M. Cooper, are not guilty of the trespass and ejectment mentioned in the plaintiffs' declaration, and therein laid to their charge, nor of the withholding from the plaintiffs of the possession of the premises also mentioned and described in said declaration, and therein laid to their charge, in manner and form as the said plaintiffs had therein complained against them.

6th. The court erred in deciding that the plaintiffs take nothing by their suit.

7th. The court erred in deciding that the defendants recover against the plaintiffs their costs and charges.

8th. In the said record, and also in giving of the said judgment,

there is manifest error in this, to wit: that by the record aforesaid it appears that the said judgment in form aforesaid was given for the said National Mining Company and the said James M. Cooper,
100 against the said Minnesota Mining Company; whereas, by the law of the land, judgment in the said plea ought to have been given for the said Minnesota Mining Company against the said National Mining Company and the said James M. Cooper; and they, the said Minnesota Mining Company, pray that the said judgment, for this error and others in the said record and process, may be reversed, annulled, and entirely set aside, and that they, the said Minnesota Mining Company, may be restored to all that they have lost by the said judgment, and that the said National Mining Company and the said James M. Cooper may rejoin to the said errors, &c.

THEODORE ROMEYN,
Attorney for Plaintiffs in Error.

1609

RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 111.

JAMES M. COOPER, Pl'ff in Error,
vs.
ENOCH C. ROBERTS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MICHIGAN.

Pleas before the Judges of the Circuit Court of the United States for the Seventh Circuit and District of Michigan, at the District Court-room in the city of Detroit in said District, of the Term of June, in the year of our Lord one thousand eight hundred and fifty-four. In the case between

JAMES M. COOPER, Plaintiff,
vs.
ENOCH C. ROBERTS, Defendant.

DISTRICT OF MICHIGAN, to wit:

Be it remembered that on the twenty-third day of June, in the year of our Lord one thousand eight hundred and fifty-three, the said James M. Cooper, plaintiff, by Sam'l F. Vinton, his attorney, came into the Court aforesaid, before the Judges thereof, in pur-

suance of the statute and the rules of said Court, and filed a declaration against the said defendant, Enoch C. Roberts, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, ss:

Circuit Court U. S. for the 9th Circuit and District of Michigan, of the Term of June, 1853.

John Doe complains of Richard Roe, for that whereas heretofore, to wit: on the 23d day of April, 1853, in the State of Michigan, and District aforesaid, James M. Cooper, who then was, and still is, a resident citizen of the Commonwealth of Pennsylvania, had devised to the said John Doe the lands and tenements hereinafter specified, with the appurtenances thereunto belonging, situated in the county of Ontonagon, in said State of Michigan, known and described as follows, viz: The east half of the north-east quarter of section number sixteen (sec. 16), in township number fifty (No. 50), north of range number thirty-nine (No. 39) west; and the east half of the south-east qu rter of the same section, township and range, containing together one hundred and sixty acres, more or less, excepting and reserving, however, from the same, two tracts of land, parcels of said premises, containing twenty-two and a half (22½) acres each, which said two tracts are described as follows, viz: one tract beginning at the southeast corner of said section, and running thence west, forty (40) rods, thence north, ninety (90) rods; thence east forty (40) rods; thence south, ninety (90) rods, to the place of beginning; and the said other tract, beginning at the northeast corner of said section, and running thence west, forty (40) rods; thence south, ninety (90) rods; thence east forty (40) rods; thence north, ninety (90)

rods, to the place of beginning: To have and to hold the said demised premises to him, the said John Doe, from the said twenty-third day of April, 1853, for and during the term of ten years, thence next ensuing. By virtue of which said demise the said John Doe afterwards, to wit: the same day and year, entered into the said land and tenements above mentioned, with the appurtenances, and was thereof possessed for the term aforesaid. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit: on the same day and year aforesaid, with force and arms entered into the said lands and tenements, with the appurtenances, and then and there ejected the said John Doe therefrom, and other wrongs and injuries to the said John Doe then and there did, to his damag ten dollars. And therefore he sues, &c.

SAMUEL F. VINTON,
Attorney for Plaintiff.

To Mr. Enoch C. Roberts,
of Rockland, Ontonagon, County, State of Michigan:

Sir:—I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of next term of the said Circuit Court of the United States in said District of Michigan, to be held at the city of Detroit on the third Monday of June next, and then and there to cause yourself to be made defendant in my stead. Otherwise, I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated May 10, 1853.

Yours respectfully, &c.,
RICHARD ROE.

I, Enoch C. Roberts, acknowledge that service of the foregoing declaration in ejectment has been this day duly made on me, and I hereby authorize Truman Smith, Esq., or any other attorney of said Circuit Court U. S. to appear for me, and make me the defendant in said place of the said Richard Roe, and also to enter into the common consent rule for me, and plead to said declaration at the next term of said Court.

E. C. ROBERTS.

ROCKLAND, MICHIGAN, *May* 23*d*, 1853.

ORDER OF SUBSTITUTION OF DEFENDANT.

On motion to the Court by Mr. Truman Smith, attorney for Enoch C. Roberts, a citizen of the State of Michigan, it is ordered that the said Enoch C. Roberts be made defendant herein in place of the now defendant, Richard Roe.

CONSENT, RULE AND PLEA.

And the said Enoch C. Roberts, by Mr. Truman Smith, his attorney, comes and confesses the lease, entry, and ouster, in the said declaration alleged, and admits himself to be in possession of the premises in said declaration mentioned, and for plea to said declaration says, that he is not guilty of the trespass and ejectment in the said declaration charged against him, and of this he puts himself upon the country; and the said John Doe doth the like.

(Signed) TRUMAN SMITH,
Att'y for Enoch C. Roberts.

Therefore, to try the issue above joined, let a jury come thereof by whom, &c., who neither, &c., to re-

cognize, &c., because as well the said plaintiff as the said defendant have put themselves upon that jury.

And now, to wit: on the twentieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, before the said Judges of the Circuit Court of the United States for the District of Michigan, come the parties aforesaid, by their respective attorneys aforesaid, and the jurors of that jury of whom mention is within made, to wit: Henry Coolidge, Lyman Blackmar, Jesse Crowell, James Hutchinson, Robert Purdy, Stilman Blanchard, Warren Hill, Simeon B. Strong, Jerry Reynolds, Joseph Visger, Abraham C. Caniff, and John Starkweather, who, being elected, tried, and sworn, say, upon their oath, that the said defendant is not guilty of the trespass and ejectment mentioned in the plaintiff's declaration, and within laid to his charge in manner and form as the said plaintiff, James M. Cooper, hath within complained against him.

Therefore it is considered that the said James M. Cooper, the plaintiff, take nothing by his said bill, and the said Enoch C. Roberts, the defendant, do go thereof without day.

And it is further considered by the Court now here, that the said defendant, Enoch C. Roberts, do recover against the said plaintiff, James M. Cooper, his costs and charges by him about his defense in this behalf laid out and expended, to be taxed, &c., and that the said Enoch C. Roberts have execution therefor, &c.

Judgment signed on the twenty-eighth day of June, in the year eighteen hundred and fifty-four.

JOHN WINDER, *Clerk.*

COPY OF BILL OF EXCEPTIONS.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MICHIGAN.

JAMES M. COOPER,
vs.
ENOCH C. ROBERTS.

Be it remembered that on the trial of this cause, an agreed statement of facts dated Washington City, April 17th, 1854, signed S. T. Vinton, for plaintiff and Truman Smith, for defendant, with all the papers therein referred to and thereto annexed, was read in evidence to the jury. A true copy of which said statement with a copy of all the papers thereto annexed, being sixteen in number, is hereunto appended.

It was further given in evidence to the jury that the corners of the township number 50 north, range 39 west in Lake Superior Land District, were established and said township was surveyed by the Government of the United States and run out into sections in the summer of 1847, which survey was duly returned, approved and established in the fall of that year, and that the corners of all the townships in that part of the Upper Peninsula, were established and the townships surveyed, and the surveys approved and established at the same period.

The defendant gave in evidence the report of Charles T. Jackson, United States Geological Surveyor of the Mineral Lands of the United States in Michigan, to the Secretary of the Interior of the date of November 10th, 1849, printed as one of the accompanying documents of the President's Annual Message to Congress in December, A. D. 1849, under the order of the House of Representatives, for the session of 1849–50, which report at page 626 contains a list of the Mineral

Lands between Portage Lake and the Montreal River, in which list the east half of said section 16 in said township number 50, is set down as Mineral lands, which report the law required to be transmitted to the executive of the State, and which books of reports are kept in the State Library at Lansing. The defendant also proved that from some time in the latter part of the year A. D. 1847, down to and including the time when said section number 16 in said township number 50 was sold by said State of Michigan, to Alfred Williams, the said Minesota Mining Company was in possession of the land now in controversy under said lease number 78, to which the same had been assigned, and had, prior to said sale, by said State of Michigan, sunk one or more shafts for copper on said land, on a vein known to be valuable in the neighborhood, and had made valuable improvements on that part of their leasehold premises, and that there was reason to believe it was valuable copper land.

The plaintiff introduced Porter Kibbee as a witness, who testified that at and before the time of the publication of the advertisement marked No. 1 in said agreed statement, and at the time the lands therein specified were offered for sale under that advertisement, he was the Commissioner of the State Land office of the State of Michigan. That said report of said Jackson was not in his office. That he had never seen it, did not know its contents or that it existed, and did not know or suspect that said section number 16 contained mines or minerals, or that it had been reported to the Government of the United States as Mineral land. On cross-examination by defendant, he testified that he enquired of the person who applied to him to advertise for sale the lands specified in said advertise-

ment, whether said lands were Mineral lands, and was told by said person in reply, and believed the same to be true, that said lands were not Mineral lands, and were only valuable for the timber they contained, and that at the time of said advertisement and sale of said section No. 16, in town 50, he had no knowledge that it contained mines or minerals. The plaintiff did not offer further evidence to prove that said Kibbee made other enquiry than above to ascertain whether said lands contained mines or minerals. It was further given in evidence that the Minesota Mining Company continued in the occupancy of the land in question under their lease down to the date of the issuing of said patent, and that they complied with all the conditions and requirements of their lease to the time of the emanation of said patent.

The defendant introduced George W. Thayer, Chief Clerk in the office of the Surveyor General of Ohio, Indiana and Michigan, who produced the following table of the lengths of the north boundaries of all the townships numbered 50 north in the Upper Peninsula of Michigan, including township number 50, north of range 39 west, and also a table of the distances across the north side of sections number one, two, three, four, five and six, in said last mentioned township which he testified were correct, said tables are as follows: * * * * *

The counsel for the plaintiff prayed the Court to give the following instructions to the jury:

1st. That if they found the facts thus given in evidence to be true, that the plaintiff was entitled to recover the premises in question.

2d. That the act of Congress of March 1st, 1847, referred to in defendant's Patent and under which the same was issued did not give to said Minesota Min-

ing Company as assignees of said lease No. 78, a right to enter and purchase the land now in controversy.

3d. That the Register and Receiver of the Lake Superior Land District, had no authority, after the expiration of said lease, to receive the application of said Minesota Mining Company to enter the land in question under said lease or to receive and decide upon the proof required by said act of March 1st, 1847, to be made by the lessee, and decide upon such proof, and permit the land in question to be entered under such lease after the expiration thereof.

4th. That the said patent of th
Company for so much of the land i
as lies within the limits of said
Town 50, was issued without autho
null and void.

The court declined to give any one of said instructions as prayed for, but instructed the jury as follows: That no facts conducing to show fraud behind the patent could be examined, as the court had limited the question of fraud to the procurement of the patent; and that the agreement of the parties on file, in which it was admitted that the land was advertised four weeks as the Statute required, that Williams became the purchaser, paid a part of the purchase money down at the sale, in pursuance of the terms of the sale, and received the certificate: afterwards that he paid the purchase money in full, received the patent and conveyed the land in controversy to the plaintiff; was a recognition of his agency which the parol evidence does not and cannot obviate—the facts having been admitted as above—the jury will be governed by them.

The court also instructed the jury that the title to section 16 under the grant could not be consi-

ment, whether said lands were Mineral lands, and was told by said person in reply, and believed the same to be true, that said lands were not Mineral lands, and were only valuable for the timber they contained, and that at the time of said advertisement and sale of said section No. 16, in town 50, he had no knowledge that it contained mines or minerals. The plaintiff did not offer further evidence to prove that said Kibbee made other enquiry than above to ascertain whether said lands contained mines or minerals. It was further given in evidence that the Minesota Mining Company continued in the occupancy of the land in question under their lease down to the date of the issuing of said patent, and that they complied with all the conditions and requirements of their lease to the time of the emanation of said patent.

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3d. That the Register and Receiver of the Lake Superior Land District, had no authority, after the expiration of said lease, to receive the application of said Minesota Mining Company to enter the land in question under said lease or to receive and decide upon the proof required by said act of March 1st, 1847, to be made by the lessee, and decide upon such proof, and permit the land in question to be entered under such lease after the expiration thereof.

4th. That the said patent of the Minesota Mining Company for so much of the land it purports to grant as lies within the limits of said Section No. 16, in Town 50, was issued without authority of law, and is null and void.

The court declined to give any one of said instructions as prayed for, but instructed the jury as follows: That no facts conducing to show fraud behind the patent could be examined, as the court had limited the question of fraud to the procurement of the patent; and that the agreement of the parties on file, in which it was admitted that the land was advertised four weeks as the Statute required, that Williams became the purchaser, paid a part of the purchase money down at the sale, in pursuance of the terms of the sale, and received the certificate: afterwards that he paid the purchase money in full, received the patent and conveyed the land in controversy to the plaintiff; was a recognition of his agency which the parol evidence does not and cannot obviate—the facts having been admitted as above—the jury will be governed by them.

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The court also instructed the jury that the title to section 16 under the grant could not be consi-

dered as absolutely vested in the State, until the surveys were executed, that the terms of the grant were, that "Section 16 in every Township of the public lands, and where such section has been otherwise disposed of, other land, equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of Schools."

That from the language of the grant it was to take effect in future, and could not be considered as appropriating any specific tract of land until the surveys were executed, by which means only could the locality of such tract be ascertained.

The court also instructed the jury that by the act of the 1st of March 1847, Congress established the "Lake Superior Land District" and by the 2d Section required the Secretary of the Treasury to cause a geological examination and survey to be made of the District, and all lands which contained lead or copper ore, or other valuable ores, should be specially designated by him and reported to the Commissioner of the General Land office, which lands the President was authorized to sell by giving six months notice, describing the mines specially, as to the quality of the ores, their extent, the facilities of transmitting the proceeds of the mines to market.

Second: All other lands in the District, not included in the report, were directed to be sold under the general law, then in force, reserving Section 16, for the use of Schools.

That the 3d section gives to Miners who have settled upon mineral lands under a permit or license from the Secretary of War, or who have occupied mineral lands prior to the passage of the act, a pre-emption right or right of purchase of the lands within their leases and permits, and to cover the land occupied by them

for purposes of mining at two dollars and fifty cents per acre; other mining lands not occupied, to be sold at five dollars per acre.

That under the above act all the mining lands within the District, reported, were taken out of the operation of the general law for the disposal of the public lands, in pursuance of an established policy, to reserve from the ordinary mode of disposing of public lands, those that contained valuable salt springs, lead mines, &c., that they might be leased or disposed of to purchasers having full knowledge of their value, by reason of the salt springs or mineral ores they contained, at their full value, for the public benefit. That by the above act all the mineral lands reported by the Geologist within the District, in pursuance of this settled policy of the Government, were appropriated and disposed of without reference to the school reservation, the appropriation of the land being made before the surveys were executed and before the locality of section 16 could be known, and as it appears from the report of the Geologist that the land in controversy contains valuable minerals, and was within the boundaries of the lease under which the Minesota Company claim, and that they had made large expenditures thereon for mining, were entitled to the right of purchase, as provided in the third section of the above law, and having paid for the same, it was a disposition of the land which Congress had a right to make, and was an exercise of power within the grant. That the setting apart of another section adjacent will satisfy the grant to the State.

The Court further instructed the jury that as the right to become purchasers of the mining lands within the above lease was admitted by the Government, with

dered as absolutely vested in the State, until the surveys were executed, that the terms of the grant were, that "Section 16 in every Township of the public lands, and where such section has been otherwise disposed of, other land, equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of Schools."

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The Court further instructed the jury that as the right to become purchasers of the mining lands within the above lease was admitted by the Government, with

the exception of the land in controversy, which is included in section 16, and as to which the patent was to create no embarrassment as the right of the State was reserved, no question arises as to the right of purchase of the other land by the Minesota Mining Company, but the objection by the plaintiff seems to rest on the right of the State to section 16, as a school section, under the original grant.

The three years' lease of the Company, of which they were assignees, had expired before the defendant's purchase was made, but it is admitted that the same lease was continued by the sanction of the government, and the rent stipulated by the lease was regularly paid, and that all the conditions of the lease were performed by the company up to the time they obtained their patent. This extension and continuance of the lease brought the case substantially within the provisions of the act of 1st of March, 1847.

That that act, by taking the mineral lands from under the operations of the general law, directing their sale under special provisions, without any reservation, and giving pre-emption rights before the surveys were executed, and, consequently, before the title vested in the state was an appropriation of the land within the powers of Congress, inconsistent with the right set up by the State, and was such a disposal of the Section, as was not prohibited by the grant.

The court also instructed the jury, that the sale of section 16, which contained minerals, by the State Commissioner of Lands, was not authorized by the laws of Michigan, and consequently that the said sale was void and inoperative; that the Commissioner was bound to make inquiry, whether that section contained Minerals, That the act of the 1st of March, 1847, requires a geological examination and survey of all the

mineral lands within the land District, and directing a report of the same to be made to the Commissioner of the General Land Office, at Washington City, and that the publication of such report, by the authority of Congress, all such reports being public documents, which were required to be transmitted to the Executive of each state, which reports are preserved in the Library of the Secretary of State at Lansing, afforded an opportunity to the Commisioner, by the use of ordinary diligence before the sale, to ascertain, whether section 16 contained minerals.

To all and each of which instructions of the Court to the jury, the plaintiff by his counsel excepted, and this bill of said Exceptions being reduced to writing, was then and there signed and sealed by the Judges of said Court in open Court, and ordered to be made a part of the record in this case.

(Signed) JOHN McLEAN, [L. S]
(Signed) ROSS WILKINS, [L. S.]

Copy of the agreed Statement of facts, and all the papers therein, and in the Bill of Exceptions referred to, being 16 in number.

IN CIRCUIT COURT U. S.
for District of Michigan:

JAMES M. COOPER
vs.
ENOCH C. ROBERTS. } Ejectment.

To relieve both parties from the necessity of making proof of such facts as are supposed to admit of no question so far as respects their existence, the matter hereinafter specified are *prima facia* to be taken and admitted to be true: subject, however, to be disproved, rebutted, and their effect invalidated to the same ex-

tent, and in the same manner as though the proof thereof had been made by either party without entering into this agreement; and the parties respectively are to have the same right to except to the admissibility, or relevancy of any of said matters, as though they were offered in evidence by one party, and objected to by the other. On the above conditions it is admitted.

That James M. Cooper, the plaintiff, is a citizen and resident of the Commonwealth of Pennsylvania, and that the defendant, Enoch C. Roberts, is a citizen and resident of the State of Michigan, and is in possession of the premises in dispute.

That the Commissioner of the State Land Office of the State of Michigan did, on the 22d day of January, 1851, advertise for sale for the period of four consecutive weeks from that date, in a newspaper called the "Lansing Journal," published in the City of Lansing, Michigan, certain sections, numbered sixteen, in the Lake Superior Land District, in that State, claimed by the said State of Michigan as School lands, of which the land now in controversy is part, a copy of which advertisement is hereunto annexed, marked No. 1—which period of four weeks was the length of time during which it was the practice of said State Laud Office to advertise the State School lands for sale.

That pursuant to said advertisement, the said Commissioner of State lands, at the office of said Commissioner, in said town of Lansing, did on the 25th of February, A. D. 1851, sell at public auction to Alfred Williams, for the sum of two thousand five hundred dollars, the said section No. 16, in Township No. 50, north of Range No. 39 west, containing six hundred and forty acres, of which section the land now in controversy is part, as will more fully appear by the certificate of Allen Goodridge, Deputy Commissioner

of State lands, of the date of the 25th of February, 1851, a copy of which, marked No. 2, is hereunto annexed.

That at the time of said sale, the said Alfred Williams paid to the Treasurer of said State of Michigan, the sum of six hundred and forty dollars, in part of the purchase-money of said section, as will appear by said Treasurer's receipt, dated February 26th, 1851, a copy of which, marked No. 3, is hereunto annexed.

That on or prior to the 13th of November, A. D. 1851, the said Alfred Williams paid to the State of Michigan the full amount of principal and interest due on said section of land, and obtained the State Land Commissioner's certificate that he was entitled to a patent for said section of land, as will appear by the certificate, of Allen Goodridge, Deputy Commissioner of State lands of that date, a copy of which, marked No. 4, is hereunto annexed.

That in pursuance to said last named certificate, the Governor of said State of Michigan did, on said 13th of November, A. D. 1851, issue his patent to said Alfred Williams, his heirs and assigns, for said section of land, a copy of which, marked No. 5, is hereunto annexed.

That on the 19th day of May, A. D. 1852, the said Alfred Williams, for the consideration of ten thousand dollars, sold and conveyed, by deed of conveyance duly executed, all of said section number sixteen, to said James M. Cooper, his heirs and assigns; except certain parts thereof therein excepted; a copy of which conveyance, marked No. 6, is hereunto annexed; and embraces as part of the land conveyed, and not excepted, the promises now in controversy, and which the said James M. Cooper in fact holds in trust for the National Mining Company.

It is further admitted on the conditions above expressed, that on the 5th of August, 1844, Walter Cunningham, agent for Mineral Lands of the United States, gave to Joseph L. Hempstead a permit for the term of one year, to examine and dig for lead and other ores in any part of the lands known as the Mineral District, in the region of country south of Lake Superior; a copy of which permit is hereunto annexed, marked No. 7.

That on the 7th of July, A. D. 1845, the said Joseph L. Hempstead transmitted to the then Secretary of War, a description and plat of the land he had selected for the purpose of mining thereon, which called to begin at a stake on the east bank of the Ontonagon river directly opposite to the point where the West Branch of said river enters the main stream, and running east three miles; thence north three miles; thence west three miles; thence south three miles to the place of beginning; which description was accompanied by the certificate of John Stockton, Superintendent of the Mineral Lands, that he had carefully examined the said description, and found that it did not conflict with any other location made under proper authority, and recommended that a lease for the same be granted to the said Hempstead; a copy of which said description, plat, and certificate, are on the same sheet of paper with said copy of said permit marked No. 7, as above.

That on the 16th of September, A. D. 1845, the then Secretary of War granted to said Joseph L. Hempstead for the term of three years, a lease of the above described tract of land; a copy of which, marked No. 8, is hereunto annexed.

That on or about the 6th of November, A. D. 1850, E. C. Roberts, the present defendant, as agent

for the Minnesota Mining Company, applied to the Receiver of the Land Office, at Sault St. Marie, to purchase said leasehold premises, and submitted his proofs for that purpose, which the said Receiver refused to act upon, for the reason that the said Land Office was then closed for want of a Register, as will appear by a letter from said Receiver to the Commissioner of the General Land Office, dated June 28th, 1851, a copy of which, marked No. 9, is hereunto annexed.

On the 10th of November, 1851, the Minnesota Mining Company, to which said lease in Equity belonged, applied again to the Register and Receiver of the Sault Ste. Marie Land District, to enter the land covered by the said lease, who being satisfied with the proofs submitted to them in support of said claim, allowed said Company to enter said land in the corporate name of said Minnesota Mining Company to the extent claimed by them, except so much thereof as lay within the limits of said section No. 16, as will appear by the letter of the Register and Receiver of said Land Office, of the date of Nov'r 10th, 1851, reporting their doings in relation to said entry to the Commissioner of the General Land Office, a copy of which, marked No. 10, is hereunto annexed.

The first application to enter said land under said lease was made, as above stated, to said Receiver, on said 6th of November, A. D. 1850, as appears by a letter from the Commissioner of the General Land Office to S. F. Vinton, dated September 1st, 1853, which letter is hereunto annexed, marked No. 11.

On the 10th of September, A. D. 1851, the then Secretary of the Interior, on the claim of the State of Michigan, under the compact for her admission into

the Union, to be the rightful owner of such sections, numbered 16, as might be covered or interfered, with by a mineral lease, decided that the act of the 1st of March, A. D. 1847, entitled "An Act to establish a Land Office in the northern part of Michigan, and to provide for the sale of Mineral Lands in the State of Michigan," did not authorize the holder of a mineral lease to enter section 16, and that said section under said compact, belonged to said State, as will appear by the letter of the Secretary of the Interior to the Commissioner of the General Land Office, of the date of September 10th, 1851, a copy of which, marked No. 12, is hereunto annexed.

The Minnesota Mining Company took an appeal from so much of the decision of the Register and Receiver of said 10th of November, A. D. 1851, as refused permission to said Company to enter any part of section No. 16 under said lease, which decision of said Register and Receiver was, on the 15th of December, 1851, confirmed by the Commissioner of the General Land Office; from which last mentioned decision an appeal, on behalf of said Minnesota Mining Company, was taken to the Secretary of the Interior, who, on the 4th of February, A. D. 1852, on the application of the agents of said Minnesota Mining Company, in order to enable said Company to test their title to that part of said section which might be embraced within the limits of said lease, by a letter of that date, addressed to the Commissioner of the General Land Office, consented that their entry should embrace all the land covered by said lease, but that no patent should be issued without a reservation of the right of the State of Michigan to so much of said section number 16, as might be covered by said

lease, as will appear by said last named letter, a copy of which, marked No. 13, is hereunto annexed.

On the 9th of April, 1852, a patent was issued to the said Minnesota Mining Company, embracing the land now in controversy, a copy of which, marked No. 14, is hereunto annexed.

The said defendant, Enoch C. Roberts, holds possession of the land in controversy, under the said Minnesota Mining Company as their tenant.

The Commissioner of the General Land Office, on the 16th of April, 1848, issued a letter of instructions to the Register and Receiver of said Land District, for their government, in carrying into effect the said act of the 1st of March, 1847, a copy of which is hereunto annexed, marked No. 15. And on the 25th of the same month, the said Commissioner issued a further letter of instructions to said Register and Receiver, for their government, in carrying said act of the 1st of March, A. D. 1847, into effect, a copy of which last letter of instructions, marked No. 16, is also hereunto annexed.

Printed copies of these letters of instruction were forthwith forwarded by said Commissioner to said Register and Receiver for their government, and the government of all persons of whom they might concern.

Immediately after their receipt at said Land Office, they came to the knowledge of the owners of said lease.

It is agreed that from the 6th of November, 1850, when the said Minnesota Mining Company first applied to entir said land, until the 10th of September, 1851, the question of the right of the mineral lessees to enter under said act of 1st of March, 1847, section 16, or any part thereof, was pending before the Secretary of the Interior, for his decision thereon, and

by reason thereof the said Minnesota Mining Company were not permitted to enter the land now in controversy. And after said decision of the 10th of September, 1851, the same being adverse to the right of the lessees to enter said section 16, the said Minnesota Mining Company was, by said decision, prevented from entering thereof, until the consent of the said Secretary was given, in the said letter, marked No. 13, as above.

S. F. VINTON, *for Pl'ff.*
TRUMAN SMITH, *for Def't.*

WASHINGTON CITY, April 29th, 1854.

SUPREME COURT

—OF THE—

UNITED STATES.

JAMES M. COOPER, *Plaintiff in Error.*
vs.
ENOCH C. ROBERTS.

ASSIGNMENT OF ERRORS.

Ejectment in Circuit Court for the District of Michigan.

And now the said James M. Cooper, plaintiff in error, by his counsel comes and says, that there is error to his injury in the record and judgment in this case in this, to wit:

1st. That the Court erred in refusing on the trial to give to the jury the instructions designated in the plaintiff's said Bill of Exceptions by the numbers 1, 2, 3 and 4, as prayed for by him.

2d. The Court erred in their instruction to the

jury that in the grant by Congress of section No. 16 to the State of Michigan, Congress retained the power of thereafter appropriating and disposing of said section before the survey thereof, by sale or otherwise, and that the setting apart of another section adjacent thereto would satisfy the grant to the State.

3d. They erred in the instruction to the jury, that all lands within the Lake Superior Land District, reported by the United States Geologist to the Commissioner of the General Land Office as mineral lands, were appropriated and disposed of by the Act of Congress of the 1st of March, 1847, as well those *within* as those without the limits of School Section No. 16.

4th. They erred in the instruction to the jury, that the said act of Congress gave to the said Minesota Mining Company, as assignees of said Mineral Lease No. 78, a right to enter and purchase the land now in controversy, notwithstanding the same is within the limits of School Section No. 16.

5th. They erred in the instruction to the jury, that the said Minnesota Mining Company had the right to enter and purchase the land in controversy, after the expiration of their lease, by efflux of time.

6th. They erred in their instruction, that the State Land Commissioner of the State of Michigan was officially bound to know the existence of the Report of the United States Geologist to the Commissioner of the General Land Office, and to inform himself of its contents before proceeding under the laws of Michigan to sell the land in controversy.

7th. They erred in their instruction to the jury, that the sale of the land in controversy by the said State Land Commissioner, under which the plaintiff claims title, was not authorized by the laws of Michigan, and was therefore null and void.

8th. The Court erred to the injury of the plaintiff, in the whole and every part of their charge to the jury; except only that part thereof, which instructed them, that no facts conducing to show fraud behind the plaintiff's patent in the procurement of his title could be examined into, or regarded by them.

9th. That the Court erred in rendering judgment against the said plaintiff in error.

Wherefore, for the foregoing and other manifest errors in said record, judgment, and proceedings, the said plaintiff in error prays that they may be reversed, and that he may be restored to all things lost thereby.

S. F. VINTON, AND
J. M. HOWARD,
Counsel for Pl'ff.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the Circuit Court of the United States for the Seventh Circuit and District of Michigan, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in said Circuit Court before you, between James M. Cooper and Enoch C. Roberts, a manifest error hath happened, to the great damage of the said James M. Cooper, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under

your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court of the United States, this twenty-fifth day of November, in the year [SEAL.] of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-ninth.

JNO. WINDER,
Clerk of the Circuit Court of the United States, for the Seventh Circuit and District of Michigan.

[The execution of the within writ of error appears by the return hereto attached and annexed.

JNO. WINDER,
Clerk of the Circuit Court U. S. for the District of Michigan.

UNITED STATES OF AMERICA, ss:

To ENOCH C. ROBERTS, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Seventh Circuit and District of Michigan, wherein

James M. Cooper is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in their behalf.

Witness the Honorable Ross Wilkins, one of the Judges of said Circuit Court, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

ROSS WILKINS.

I hereby enter the appearance of the within named defendant in error to the writ within mentioned, in the Supreme Court of the United States.

TRUMAN SMITH,
Att'y for Def't in Error.

[TRUE COPY.]

Attest, WM. THOS. CARROLL,
Clerk of Supreme Court U. S.

[redacted]

UNITED [redacted]

[redacted]

[redacted]

[

James M. Cooper is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in their behalf.

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TRUMAN SMITH,
Atty for Def't in Error.

[True Copy.]

Attest, WM. THOS. CARROLL,
Clerk of Supreme Court U. S.

SUPREME COURT

OF THE

UNITED STATES.

No. ~~144.~~ 13 December Term, A. D. 186~~5~~.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

THE MINNESOTA MINING COMPANY,
Plaintiff in Error.
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.
} In Ejectment.

THEODORE ROMEYN,
Counsel for Plaintiff.
ALEXANDER W. BUEL,
Counsel for Defendants

BRIEF OF ALEXANDER W. BUEL, COUNSEL FOR DEFENDANTS IN ERROR.

PART I.—Preliminary Statement.

PART II.—Case found by Court below.

PART III.—Legal Questions.

PART IV.—Appendix, containing part of Record in Cooper vs Roberts, 18th How. 179.

SUPREME COURT

OF THE

UNITED STATES.

No. 144. December Term, A. D. 1864

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

THE MINNESOTA MINING COMPANY,
Plaintiff in Error.
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.
} In Ejectment.

THEODORE ROMEYN,
Counsel for Plaintiff.
ALEXANDER W. BUEL,
Counsel for Defendants.

BRIEF OF ALEXANDER W. BUEL, COUNSEL FOR DEFENDANTS IN ERROR.

PART I.—Preliminary Statement.

PART II.—Case found by Court below.

PART III.—Legal Questions.

PART IV.—Appendix, containing part of Record in Cooper vs. Roberts, 18th How. 179.

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1854.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

THE MINNESOTA MINING COMPANY
Plaintiff in Error
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER
Defendants in Error

THEODORE SWEETS
Counsel for Plaintiff in Error

ALEXANDER W. BUELL
Counsel for Defendants in Error

BRIEF OF ALEXANDER W. BUELL, COUNSEL FOR THE DEFENDANTS IN ERROR.

Part I.—Preliminary Statement.

Part II.—Statement of Facts.

Part III.—Argument.

Part IV.—Authorities cited and Points of Counsel.

SUPREME COURT

OF THE

UNITED STATES.

No. 144. December Term, A. D. 1864

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

THE MINNESOTA MINING COMPANY,
Plaintiff in Error.
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.
} In Ejectment.

THEODORE ROMEYN,
Counsel for Plaintiff.
ALEXANDER W. BUEL,
Counsel for Defendants.

BRIEF OF ALEXANDER W. BUEL, COUNSEL FOR DEFENDANTS IN ERROR.

PART I.—Preliminary Statement.

PART II.—Case found by Court below.

PART III.—Legal Questions.

PART IV.—Appendix, containing part of Record in Cooper vs. Roberts, 18th How. 179.

SUPREME COURT

OF THE UNITED STATES.

NO. 144. DECEMBER TERM A. D. 1864.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

THE MINNESOTA MINING COMPANY, *Plaintiff in Error.*
vs.
THE NATIONAL MINING COMPANY and JAMES M. COOPER.
In Ejectment.

BRIEF OF ALEXANDER W. BUEL, COUNSEL FOR DEFENDANTS IN ERROR.

PART I.—Preliminary Statement.

This cause was tried without a jury, before the District Court of the Upper Peninsula, for the County of Ontonagon, State of Michigan, at the August Term, A. D. 1861.

The Court made a special finding of the facts, which is to be treated in all respects as a special verdict, under the statutes and practice of that State, and gave judgment thereon for the defendants in error, who were the defendants below. (The Record at pages 18-51 contains the finding with Papers annexed, Nos. 1-14.)

Exceptions were taken on the trial to certain rulings of the Court on questions of evidence, and subsequently, to the matters of law embodied in the finding. (For bill, see Record, pages 6-17.)

The cause was then removed by writ of error, to the Supreme Court of the State of Michigan, where it was decided at the January Term, A. D. 1863, and the judgment below was affirmed.

11th Mich. R. 186.

The cause now comes into this court by writ of error, upon the alleged ground, that the plaintiff in error claimed, under acts of the Congress of the United States, the decision of the said District Court was against his right and title, and in the said suit the construction of said statutes was drawn in question.

The record does not show any *specific* exception for, or allegation of error, made either in the courts below or in this court, for error in the construction of any statute of the United States, or *specifically* pointing to any question of construction thereon.

2 to 4 The plaintiff assigns in this court errors, (Rec. p. 56) the 3d ~~and 4th~~ being purely questions of evidence, raised on the trial below; and each of the others is in the most general terms, alleging only in substance an erroneous judgment, and in no way *specifically* indicating the questions to be raised or propositions to be urged. They are substantially the equivalents of each other, and simply a declaration that the judgment is not supported by the facts found.

For plaintiff's declaration, (see Rec p. 4.)

The merits of This cause has been twice before this Court on error to the Circuit Court of the United States for the District of Michigan, and twice disposed of by this Court against the alleged title of the plaintiff in error.

The merits of *First*. This cause came fully before this Court in Cooper vs. Roberts, (18 How. 179), in which the important and material facts were stipulated, amongst which was the fact, *that Roberts was then*

in possession as tenant, under the Minnesota Mining Company, the present plaintiff.

Appendix to Brief. p. 10

The *same* fact is also found in this cause. (Rec. p. 24, subd. 25.)

It is also a fact found in this cause, *that the present plaintiff defended said action of Cooper against his tenant, Roberts.* (Page 24, subd. 25.)

And the further like facts are found in this cause, that, whilst said action was pending in the C. C. U. S. for the district of Michigan, *the present plaintiff and his tenant said Roberts* filed in said court their sworn bill, for the purpose, amongst others, of *perpetually enjoining* the prosecution of that action.

And that, amongst other things in their said bill, *they* allege that without discovery, "*They could not safely proceed to the trial of said action*" "and to *their defence* therein." (p. 25, subd. 26.)

Furthermore, the facts that Cooper, one of the defendants claimed to hold the legal title, and that the National Mining Company, the other defendant was in possession as a *tenant under Cooper* at the commencement of the present suit, are both found in this cause.

Rec. p. 22, 18th subd. of Special Finding.

The records in the two cases show a litigation between the same parties, on the same title and on the same material facts; and the questions now raised so far as this court will now take jurisdiction thereof, and so far as they are now material, are the same.

For the stipulated facts in Cooper vs. Roberts, see app. to Brief p. 7.

For Bill of Exc. in Cooper vs. Roberts, see app. to Brief p. 2.

For Assignment of Errors in Cooper vs. Roberts, see app. to Brief p. 11.

Second. This cause came again before this court when the case

of Cooper vs. Roberts (Roberts being then plaintiff in error) was brought to this court a second time upon writ of error, with the same stipulated facts and same questions, so far as they are now material and this Court will now take jurisdiction.

Roberts vs. Cooper, 20 How. 481.

For a third time this cause now comes up the merits of before this court for alleged error in the construction of certain acts of Congress, which has already not only been settled, but settled in reference to the same parties, the same title and the same material facts, by the solemn decision of this court, and the subsequent, deliberate and accordant decisions of the courts of Michigan from its lower to its highest tribunal.

It is under these circumstances that the defendant Cooper is now called upon before a court of competent jurisdiction for the *eighth* time *at least*, as appears by the record, to maintain or defend his title against the present plaintiff.

PART II.—THE CASE FOUND BY COURT BELOW.

I.—Plaintiff's Title.

The plaintiff claims by record title direct under a patent of the United States, for the demanded premises; which are the E. ½ of N. E. ¼ and E. ½ of S. E. ¼ S. 16 T. 50 N., R. 39 W.; excepting however, a small tract in the N. E. corner of said section, of 20 acres, and another in the S. E. corner of said section, of 22½ acres; said excepted tract in the N. E. corner being *bounded by East and West lines of* 80 *rods, and North and South lines of* 40 *rods* (page 20 copy of patent, is paper No. 10, p 45.)

That the plaintiff's patent is dated May 9th A. D. 1852. It purports to have been issued under the provisions of the Act of Congress of March 1, 1847, entitled "An Act to establish a land office in the Northern part of Michigan, etc.," and of the Act of Congress of September 26th, 1850, entitled "An Act to reduce the minimum price of the mineral lands, etc."

That it conveys to the plaintiff (amongst various other tracts not now in question) the E. ½ of the N. E. ¼ and E. ½ of S. E. ¼ of S. 16 T. 50 N., R. 39 W. and said quarters include the premises demanded.

But that said conveyance is subject to an express reservation contained in the patent, and in these words, viz:—"*reserving any right which the State of Michigan may have in and to the east half of the north-east quarter, and the east half of the south-east quarter of section sixteen, in township fifty north, of range thirty-nine west, above described, under or by virtue of the provisions of the first section of the Act of Congress of the 23d June, 1836, entitled, "An Act supplementary to the act entitled An Act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions.*"

ORIGIN OF THE PLAINTIFF'S PATENT.

The finding contains a class of facts, which occured prior to the issuing of the plaintiff's patent, having relation to its origin, and some of these are supposed by the plaintiffs to be important in sustaining patent. They are contained in sub-divisions of the finding, numbered 1 to 12 inclusive, 14 to 17 inclusive, 31 to 38 inclusive, and in the papers from 1 to 9 inclusive annexed as parts of the finding.

But the facts of this class contained in the sub-divisions of finding 6, 34, 36, 37 and 38, are found under exception by the defendants to the ruling of the Court, admitting in evidence the deposition of John Wilson, which was offered by plaintiffs, to show the facts contained in those sub-divisions, and was admitted for that purpose. (p. 6 and 7.) The relevancy to the issue of these facts shown by said deposition, will be considered hereafter and denied, under the head of LEGAL QUESTION NO. IV.

The following are the leading facts above alluded to as preceding and relating to the origin of the patent.

1. That the United States mineral land agent, Aug. 5th, A. D. 1844, gave to Joseph L. Hempstead a written permit to select a tract of land for mining purposes, in the Lake Superior Mineral District. He made his selection July 7th, A. D. 1845, and transmitted it in writing to the then Secretary of War, on the 11th of same month. (p. 18, subd. 1 and 2. Copies of permit and selection are paper No. 1, p. 28 to 32.)

2. That the Secretary of War, Sept. 16th, A. D. 1845, gave to said Hempstead a written lease of the tract selected by him, for the term of three years. This lease contains, amongst other things, a covenant for the payment of rent (being a percentage on the metal extracted); a provision for renewing the lease on its expiration, for the further term of three years; and an agreement by the lessee, that within three months after its expiration, he will remove from said tract and surrender peaceable possession, unless within said three months

he obtain such renewal. (p. 18, subd. 3. Copy of lease is paper No. 2, p. 32 to 36.)

3. That said T. 50. N., R. 39 W. was surveyed and run out into sections by the United States, in the summer of 1847, and said survey returned and approved in the fall of that year. (p. 19, subd. 4.)

That said lease covers a small part on the east side of sec. 16, in said township. The west boundary line of the lease passes through said section North and South so as to be a few links west of and include in the lease a little more than the east half of the east halves of the north-east and south-east quarters of said section. (p. 19, subd. 5.)

4. That the plaintiffs, Nov. 6th, A. D. 1850, made their first formal written application to the Receiver of the Land Office, at the Sault St. Marie, to purchase their location, and submitted their proofs, but the Receiver refused to act upon them, for the reason that the land office was then without a register. (p. 19, subd. 8. Copy of application is paper No. 5, p. 41.)

5 That Dr Jackson, Geological Surveyor of Mineral lands of the United States, in Michigan, made a report of said lands, dated Nov. 10th, A. D. 1849, and printed as a congressional document, which embraced the E. half of said section 16, as containing minerals. (p. 19, subd. 9.)

6. That in the spring of 1851, the State of Michigan made claim to said section 16, and other sections 16 similarly interfered with by mineral leases, before the United States Land Commissioner, under the compact for her admission into the Union, *versus* the holders of leases and permits claiming thereunder and under the Act of March 1st, 1847. Said Commissioner decided adversely to the State, April 22d, 1851. The State appealed to the Secretary of the Interior. The plaintiffs were notified of said appeal, on the 21st May following. The Secretary of the Interior, Sept. 10th, 1851, decided in favor the State, and reversed the Commissioner's said decision of April 22d. (p. 20, subd. 10. Copy of decision of Secretary of Interior, is paper No. 7, pp. 41-43.)

7. That the plaintiffs, Nov. 10th, A. D. 1851, applied to the Land Office at Sault Ste. Marie, to purchase their location, under protest as to their right to the part of section 16, claimed by them. The land officers decided to allow them to enter the lands within the limits of their lease, excepting section 16. (p. 20, subd. 11. Copy of decision is paper No. 8, p. 44.)

8. That the plaintiffs appealed to the United States Land Com-

missioner, from so much of said decision of the Sault St. Marie Land Officers of Nov. 10th, 1851, as denied the right to enter any part of seetion 16, but said decision was confirmed by the Commissioner, Dec. 15th, A. D. 1851.

That from said Commissioner's decision, the plantiffs appealed to the Secretary of the Interior, who re-affirmed his former decision in favor of the State, of September 10th, A. D. 1851, but, *in order to enable the plaintiffs to test their right to any part of section* 16, *with any adverse party claiming under the State*, gave his written consent to the Commissioner of the General Land Office, that the plaintiffs' entry might embrace all the lands covered by their lease, *with the condition that no patent should issue without a reservation of the right of the State of Michigan to the disputed portions of said section* 16 *covered by the lease.* (p. 20, subd. 12. Copy of said written consent is paper No. 9, p. 44.

That the entry was then made and the patent issued, April 9th, 1852, reserving the right of the State as hereinbefore stated. (Rec. p. 20, subd. 13. Copy of patent is paper No. 10, p. 45.)

9. That the plaintiffs, in the fall of 1847 took possession not only of all the lands within the limits of their lease, but the whole of the E. ½ of the S. E. and N. E. ¼ of said section 16, and remained in such possession till June 14th, A. D. 1858. On that day, James M. Cooper, one of the defendants in the case, in his action at law against Enoch C. Roberts, a tenant of the present plaintiffs, was put in possession of the whole of the E. ½ of said S. E. and N. E. quarters, excepti ng two tracts of 22½ acres each, in the S. E. and N. E. corners of said section 16, particularly described in the writ of possession, hereinafter more specially referred to. (p. 21, subd. 14. Writ of possession is paper No. 11, p. 46.)

10. That immediately after the plaintiffs took possession as aforesaid, they commenced mining operations on the E. ½ of the N. E. ¼ of said section 16. In the next year, 1848, they sunk a shaft, drove a level, erected a stamp mill, with engines and saw mill, on a certain water course, and made improvements and clearings, all which were upon the W. ½ of the E. ½ of the N. E. ¼ of said section 16; *were west of the west line of the lease*, (and therefore *not within its boundaries.*) (p. 21, subd. 15 gives a more particular description of the precise localities of said stamp mill, with engines, saw mill and water course.)

11. That the plaintiffs were assignees of the lease on and ever since Nov. 6th, 1850, when they made their written application to purchase, and they fulfilled the conditions imposed on them as assignees. (p. 22, subd. 17.)

12. That the land officers were not appointed, and the land offices opened at Sault St. Marie, till in the year 1848. The lands were not offered for sale, under the President's proclamation, till Sept. 1st, 1851, that being the day fixed for sale, and the date of proclamation being May 6th, 1851. The reasons for delaying the application to enter were a belief and understanding that it was unnecessary to do so, until the lands were offered for sale by the President; and the plaintiffs had no knowledge, prior to their application to purchase in 1850, that the State claimed the land in controversy. (p. 27.)

13. That the issuing of the General Land Office instructions of April 16th and 25th, 1848; the action and practice of the General Land Office; the issuing of permits and leases prior to 1846; their discontinuance in 1846; their expiration; the holding over by lessees; and the issuing of patents to them; these matters are contained in the finding, subdivisions 6, 34, 36, 37 and 38; (pp. 19-27) but they were found on the deposition of John Wilson, subject to exceptions by the defendants as to its admissibility for the purpose of proving the matters contained in these subdivisions. (pp. 6 and 7. Copy of deposition is paper A, p. 13.)

II. DEFENDANTS' TITLE.

Defendants' Title by Possession.

The defendants claim to have a *prima facie* legal title by their possession at commencement of suit, admitted of record, and they claim under this as sufficient, until a superior title is shown in the plaintiffs. The finding also shows that the defendant Cooper, then claimed to hold the legal title; that he was put into possession June 14th, A. D. 1858, under a writ of possession, issued out of the Circuit Court of the United States for the District of Michigan, on a judgment rendered by said Court in an action of ejectment brought by said Cooper against Enoch C. Roberts, said Roberts then holding as a tenant of plaintiffs, (p. 21, subd. 14); that he so held possession, until he put the other defendants in this case, the National Mining Company, in possession as his tenants, and they were thus holding when this suit was commenced. (p. 22, subd. 18. Writ of possession is paper No. 11, p. 46.)

Defendants' Record Title.

The defendants claim under record title as follows:

1. By the Act of Congress of June 23d, 1836, and the compact of Michigan with the United States, providing for the admission of that State into the Union.

2. By the patent of the State to Alfred Williams.

3. By the deed of said Williams and wife to James M. Cooper, one of the defendants; the other defendant, the National Mining Company, being as before stated, tenant of said Cooper.

PATENT OF THE STATE TO WILLIAMS

That the State issued its patent, Nov. 13, A. D
Alfred Williams, for the whole of said section 16.
Patent is paper No. 12, p. 47.)

That an Act of the Legislature of Michigan was afterwards passed to confirm said sale to Williams and certain other sales of sections 16, entitled "An Act to coufirm certain sales of land." Approved February 13th, 1855. (p. 22, subd. 19.)

Mich. Sess. L. 1855. p. 286.

DEED OF WILLIAMS AND WIFE TO DEFENDANT COOPER.

1 That on the 19th May, A. D. 1852, said Williams and wife, for the consideration of ten thousand dollars, paid by Cooper to Williams, conveyed to the said Cooper the whole of said section 16, excepting two tracts of 22½ acres each, in the S. E. and N. E. corners of said section, said second excepted tract, in the N. E. corner, being described as bounded *by East and West lines of* 40 *rods, and North and South lines of* 90 *rods.*

2. That said two excepted tracts are further described in said deed by reference to a prior conveyance of the same, and a reservation in such prior conveyance of certain rights and interests out of said second tract in the N. E. corner. Said deed of Williams and wife to Cooper, also conveys to him said reservation.

3. That in the said further description, said deed calls for certain fixed objects, as situate on said second tract in the N. E. corner, viz: "*the engines and mills of the Minnesota Mining Company, situate on said second tract,*" *and* "*the stream of water thereon, on which their stamp and saw mills are situated.*" (p. 22, subd. 20. Deed of Williams and wife to Cooper is paper No. 13, p. 48.)

THE PRIOR DEED REFERRED TO IN SAID DEED OF WILLIAMS AND WIFE TO COOPER.

12. That the land officers were not appointed, and the land offices opened at Sault St. Marie, till in the year 1848. The lands were not offered for sale, under the President's proclamation, till Sept. 1st, 1851, that being the day fixed for sale, and the date of proclamation being May 6th, 1851. The reasons for delaying the application to enter were a belief and understanding that it was unnecessary to do so, until the lands were offered for sale by the President; and the plaintiffs had no knowledge, prior to their application to purchase in 1850, that the State claimed the land in controversy. (p. 27.)

13. That the issuing of the General Land Office instructions of April 16th and 25th, 1848; the action and practice of the General Land Office; the issuing of permits and leases prior to 1846; their discontinuance in 1846; their expiration; the holding over by lessees; and the issuing of patents to them; these matters are contained in the finding, subdivisions 6, 34, 36, 37 and 38; (pp. 19-27) but they were found on the deposition of John Wilson, subject to exceptions by the defendants as to its admissibility for the purpose of proving the matters contained in these subdivisions. (pp. 6 and 7. Copy of deposition is paper A, p. 13.)

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Defendants' Record Title.

The defendants claim under record title as follows:

1. By the Act of Congress of June 23d, 1836, and the compact of Michigan with the United States, providing for the admission of that State into the Union.

2. By the patent of the State to Alfred Williams.

3. By the deed of said Williams and wife to James M. Cooper, one of the defendants; the other defendant, the National Mining Company, being as before stated, tenant of said Cooper.

PATENT OF THE STATE TO WILLIAMS.

That the State issued its patent, Nov. 13, A. D. 1861, to said Alfred Williams, for the whole of said section 16. (p. 22, subd 19. Patent is paper No. 12, p. 47.)

That an Act of the Legislature of Michigan was afterwards passed to confirm said sale to Williams and certain other sales of sections 16, entitled "An Act to coufirm certain sales of land." Approved February 13th, 1855. (p. 22, subd. 19.)

Mich. Sess. L. 1855. p. 286.

DEED OF WILLIAMS AND WIFE TO DEFENDANT COOPER.

1 That on the 19th May, A. D. 1852, said Williams and wife, for the consideration of ten thousand dollars, paid by Cooper to Williams, conveyed to the said Cooper the whole of said section 16, excepting two tracts of 22½ acres each, in the S. E. and N. E. corners of said section, said second excepted tract, in the N. E. corner, being described as bounded *by East and West lines of* 40 *rods, and North and South lines of* 90 *rods.*

2. That said two excepted tracts are further described in said deed by reference to a prior conveyance of the same, and a reservation in such prior conveyance of certain rights and interests out of said second tract in the N. E. corner. Said deed of Williams and wife to Cooper, also conveys to him said reservation.

3. That in the said further description, said deed calls for certain fixed objects, as situate on said second tract in the N. E. corner, viz: "*the engines and mills of the Minnesota Mining Company, situate on said second tract,*" *and* "*the stream of water thereon, on which their stamp and saw mills are situated.*" (p. 22, subd. 20. Deed of Williams and wife to Cooper is paper No. 13, p. 48.)

THE PRIOR DEED REFERRED TO IN SAID DEED OF WILLIAMS AND WIFE TO COOPER.

4. That said prior conveyance of said two excepted tracts is a deed of Williams and wife to the plaintiff, dated Nov. 4th, 1851. (p. 23, subd. 21.)

That it describes said second tract in N. E. corner by references to its courses and distances, and to a reservation which it makes out of such tract, (being the reservation before referred to as conveyed to Cooper in the deed of Williams and wife to him.)

That it also describes said courses and distances, and said reservation, and calls for the same fixed objects on said second tract in N. E. corner, as the subsequent deed of Williams and wife to Cooper; that is to say, calls for east and west lines of 40 rods, and north and south of 90 rods; and for "*the engines, stamp mill and saw mill on said tract*," *and* "*the stream of water on which said stamp and saw mill are situated.*" (p. 23, subd. 21. Deed of Williams and wife to the plaintiff is paper No. 14, p. 50.)

5. That said deed of Williams and wife to plaintiff was not introduced by him in support of his title, but by the defendants on their defence; for the following purposes, viz: (p. 23, subd. 22.)

To explain and give effect to the deed of Williams and wife to Cooper, as being the prior conveyance referred to in said deed to Cooper, and as showing the reservation to Williams made by it, and afterwards conveyed to Cooper in his said deed from Williams and wife.

Also, in connection with other facts in evidence, and found by the Court below, to show and ascertain the true boundaries of said tract *of* 22½ acres in N. E. corner of section 16, deeded as aforesaid to plaintiff, by Williams and wife, and excepted in their subsequent deed to Cooper, (p. 23, subd. 22) and thus show the true boundaries of the land and reservation deeded to Cooper.

Latent Ambiguity in Said Deeds.

6. The Court finds a latent ambiguity, disclosed and established by parol evidence, in the terms of both of said deeds, as they respectively describe the said tract of 22½ acres in the N. E. corner of said section 16, and the said reservation. (p, 24, subd. 23.)

7. The facts disclosing such ambiguity are as follows, viz:

1st. That the said stamp mill, saw mill, and engines of the plaintiffs, are the same before referred to as erected by them in 1848, on the E. ½ N. E. ¼ section 16. (p. 24, subd. 24.)

2d. That they, as thus erected, and also said stream of water, were remaining on said land, when both of said deeds were executed and were the objects then and thus described and called for in said deeds, as being situated on said second tract of 22½ acres in N. E. corner of said section. (p. 24, subd. 24.)

3d. But that "*said objects and each of them, as thus described, in fact, were not then, and never were, on said second tract of 22½ acres, according to its description in said deeds by courses and distances.*" (p. 24, subd. 24.)

As this inconsistency and repugnence in the descriptive terms of the deeds, disclosed by the parol evidence, created a latent ambiguity as to the intended limits of the 22½ acre tract, and consequently also of the reservation out of it, the Court admitted evidence of the intentions of the parties to said deed, and the facts found on this subject are as follows:

INTENTIONS OF THE PARTIES TO SAID DEEDS.

8. That the action of ejectment before referred to of *Cooper vs. Roberts*, was brought to recover possession of the E. ½ of S. E. ¼ and E. ½ of N. E. ¼ of said section 16, excepting said two tracts of 22½ acres each, according to their boundaries by courses and distances, *as the same are described in said deeds.* (p. 24, subd. 25.)

That said Roberts was then in possession as tenant of the plaintiffs, and *they employed counsel and defended said suit.* (p. 24, subd. 25, 26.)

And that whilst said action was pending in the Circuit Court of the United States, for the District of Michigan, in June, A. D. 1856, the present plaintiff and his said tenant Roberts filed in the same Court their sworn bill to *perpetually enjoin* the prosecution of said action; and amongst other things, they alleged in their said bill, that without discovery, "*they could not safely proceed to the trial of said action,*" "*and to their defence therein.*" (p. 25, subd. 26.)

9. That amongst other things in said bill, they also claimed and alleged that in their contract of purchase, on which said deed of Williams and wife to them was executed, it was agreed that the lines of the said tract of 22½ acres in the north-east corner of said section, "should be so located and placed, as to include thereon said steam stamp mill, saw mill, steam engine and stream of water."

And also claimed and alleged, "that the receiving of a perfect and indisputable title to so much of said lands as embraced their mill-sites, mills, stamp works, machinery and the flow of water, was one of their objects, and a principal object in making said contract."

And also claimed and alleged that said deed of Williams and wife to said Company, was executed "with a view to carry out their agreement" aforesaid.

And also claimed and alleged that the purchase money for the premises conveyed by said deed, was paid under the belief, "that said tract of land, situated in the north-east corner of said section, as described in said conveyance, included their mills, mill-sites, machinery and said stream of water on which their stamp and saw mills are situated."

And also claimed and alleged that subsequently to the execution of said deed they discovered, "that the description of said second tract in said deed specified is erroneous, and that the said lines therein set forth do not include their mills, mill-sites, machinery, nor the stream of water on which their stamp and saw mills are situated, but that these lie wholly outside of the lines specified in said deed."

And also claimed and alleged that, "by *changing the distances* west and east from those north and south, so as to secure to them their mills, mill-sites and the said stream of water, without enlarging the quantity of land embraced in the conveyance," "said conveyance would be made to conform to said agreement as in fact made between the parties, and would realize and carry out their true intent and meaning."

And also claimed and alleged that *they* could not "safely proceed to the trial of said action" of ejectment in the Circuit Court of the United States, "and *to their defense* therein without discovery from the defendant of the several matters charged" in said bill.

And also claimed that the said James M. Cooper, defendant in said bill, should release and convey to said Minnesota Mining Company "*the whole of the premises*" for which said action was brought, "or *so much* of said premises as embrace the mills of the Minnesota Mining Company, and as are necessary to the enjoyment of the stream of water on which their mills are situated; and that said Cooper should be *perpetually enjoined from prosecuting said action.*" (p. 25, subd. 26.)

10. That as already stated, said action of ejectment was defended by the plaintiffs. (p. 24, subd. 25 and 26.)

That the judgment and writ of possession awarded to the plaintiff in that action, James M. Cooper, one of the defendants in this suit, the whole E. ½ of the N. E. and S. E. quarters of said section 16, excepting said two tracts of 22½ acres each in the S. E. and N. E. corners, said tract in the N. E. corner as thus excepted, being described by *east and west lines of* 90 *rods each, and*

DIAGRAM OF PREMISES.

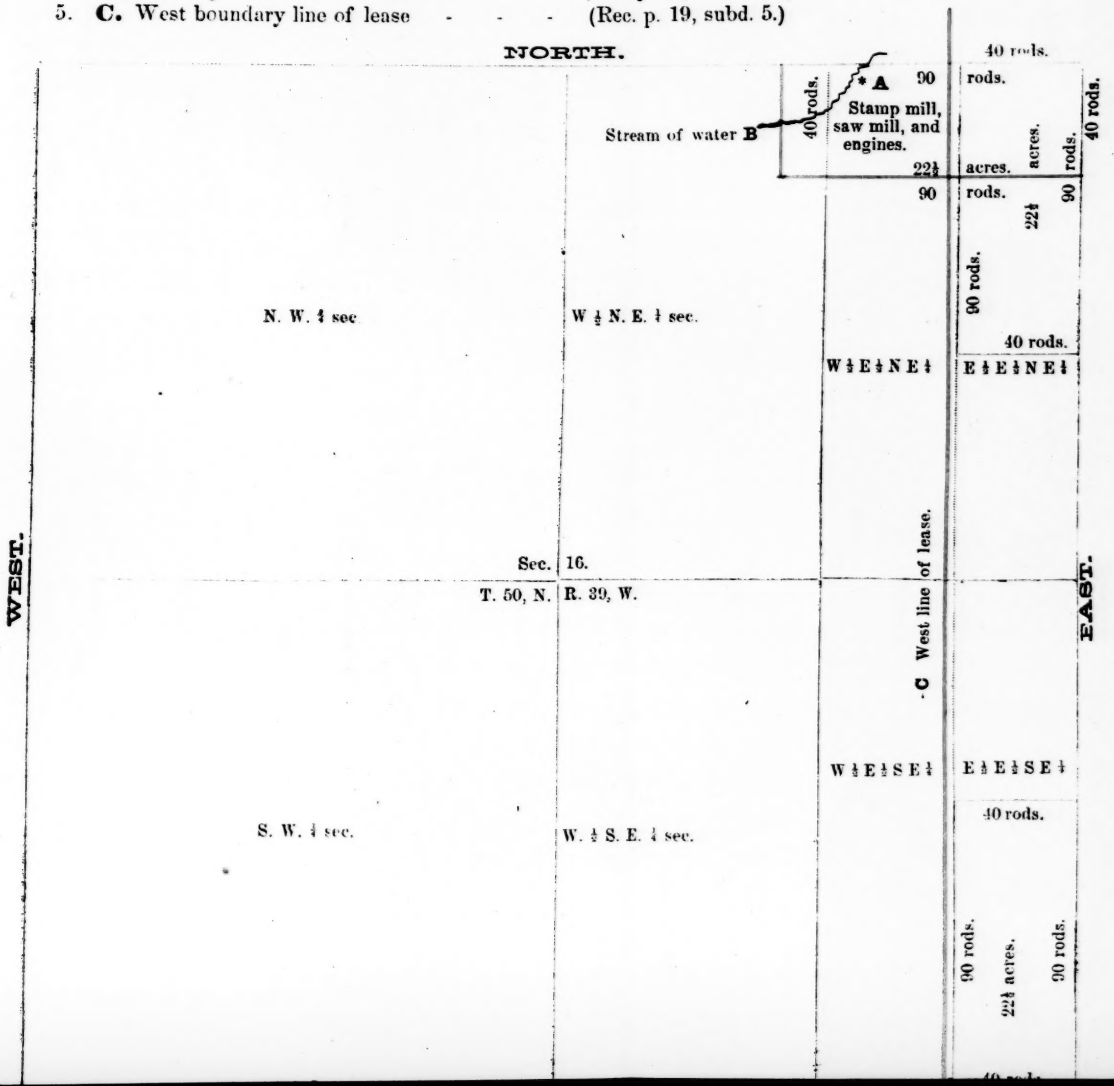
1. The two tracts bounded by *black* lines in the N. E. and S. E. corners of section, represent the two 22½ acre tracts as described by *course and distance* in the two deeds, and also in the declaration in *Cooper vs. Roberts*, (for said deeds, see Papers 13 and 14, Rec., p. 48 and 50. For said declaration, see Rec., p. 24, Subd. 25, also App. to Brief, p. 1.)

2. The tract in N. E. corner, bounded on N. and E. by *black* lines, and S. and W. by *red* lines, represents the 22½ acre tract *intended* by the parties, with boundaries, as *found* in *Cooper vs. Roberts*, and also in this suit. (As to *Coop. vs. Rob.* see p. 21, 22, subd. 14, 18; also Writ of Poss. Paper No. 11, p. 46. As to this suit, see p. 25, 26, subd. 26, 28, 29.)

3. **A.** Locality of stamp-mill, saw-mill and engines, (Rec. p. 21, subd. 15.)

4. **B.** Locality of stream of water - - - (Rec. p. 21, subd. 15.)

5. **C.** West boundary line of lease - - - (Rec. p. 19, subd. 5.)



north and south lines of 40 *rods each*, exactly as claimed by the plaintiffs in their said bill in equity, to have been the intention of the parties, and as found by the court below in this suit. (pp. 25 and 26, subd. 26, 28 and 29. Writ of poss. is paper No. 11, p. 46.)

11. That ever since the execution of said deed to the plaintiffs they have claimed the right to possess said tract of 22½ acres, including their stamp mill, saw mill, engines and the said water course, *according to its true boundaries as found by the court below*, (they are hereafter stated); and have in fact been in *actual* possession and occupancy of said mills, engines and water course, and of various portions of said tract, *according to its boundaries as so found by the court.* (p. 25, subd. 27.)

12 That it was the intention of the parties to said deed of Williams and wife to the plaintiffs to convey thereby to the plaintiffs, in addition to said tract of 22½ acres in the S. E. corner of said section, a second tract of 22½ acres in the N. E. corner of said section, which should contain the objects described in said deed, as being on said tract; that it should be bounded by north and south lines of 40 rods each, and by east and west lines of 90 rods each; and that from a tract thus bounded, the reservation described in said deed should be made. (p. 26, subd. 28.)

And that the parties to said deed of Williams and wife to Cooper, intended to except in such conveyance a tract *thus* bounded in the N. E. corner of said section, except as to the prior reservation therein described and conveyed to said Cooper, and that such reservation was intended to be the same as the aforesaid prior reservation described and intended in said deed of Williams and wife to the Minnesota Mining Company. (p. 26, subd. 28.)

13. According to the terms and effect of such deeds of Williams and wife to Cooper, and of Williams and wife to the Minnesota Mining Company, and the intentions of the parties to said deeds the court finds:—

1. That the true boundaries by courses and distances of the said tract of 22½ acres in the N. E. corner of said section are as follows, viz: Beginning at the N. E. corner of said section 16; running thence west ninety [90] rods; running thence south forty [40] rods; running thence east ninety [90] rods; and running thence north forty [40] rods, to the place of beginning. (p. 26, subd. 29.)

2. That said tract thus bounded will include on it the objects described as aforesaid in said deeds. (p. 26, subd, 29.)

3. That the reservation made by said deed to the Minnesota Mining Company, and afterwards conveyed to said Cooper, is a reservation in said thus bounded tract of 22½ acres. (p. 26, subd 29.)

4. And that the west boundary line of said tract of 22½ acres, running south forty [40] rods, as aforesaid, and the south boundary line of said tract, running east ninety [90] rods, as aforesaid, form part of the true and correct boundaries of the premises conveyed to said Cooper in said deed of Williams and wife to him, said Cooper. (p. 26, subd. 29.)

The court, treating its own finding as a special verdict, and passing on the whole law of the case, gave judgment in favor of the defendants. (Subd. 39 and 40, pp. 27, 28.)

PART III.—LEGAL QUESTIONS.

QUESTION I.

The validity of the plaintiffs' patent, viewed as the main question, the decision of which, will dispose of the case.

1. The action of ejectment, so far as it deals with *title*, deals only with the *legal* title. It can neither be maintained or defended, on an equitable title, as such.

2. Some person is always presumed to hold the legal title. The plaintiff, by commencing his action, admits of record the defendants' possession, and thus the case starts with an admission of *prima facie* legal title and seizin in fee in the defendants.

3. Therefore the plaintiff, as is always the case in ejectment, must recover on the strength of his own title, and he cannot recover on the weakness of the defendants.

And therefore also, in the outset and to make out his case, he must show a clear superior legal title in himself, such as a valid title by record, or by 20 years adverse possession, or by a prior possession short of 20 years with an entry or ouster by defendants as trespassers or without lawful right, or by a tenancy of defendants under plaintiff.

4. The plaintiff has no title by prior possession.

In the fall of 1847 he embraced in his possession the whole E. ½ of S. E. and N. E. quarters of section 16, and continued in such possession till June, 1858. Then Cooper was put in possession, except as to the two tracts described in the writ of possession, the excepted tract in N. E. corner of the section, extending 10 rods west beyond the half quarter line. (p. 21, subd. 14. Writ of poss. is paper No. 11, p. 46.)

In 1848 he made his principal improvements, amongst which were the shaft, level, raised copper. clearings, engines, stamp mill and saw mill; but *all* these were on the W. ½ of the E. ½ of the N. E. ¼ of said section, and were "*west of the west boundary line*" of the lease, and consequently *without its limits.* (p. 21, subd. 15.)

Therefore, if the United States held the title, he was a trespasser as against the United States as to all his possessions and improvements on section 16 *outside* of his lease from the U. S.; and if Michigan held the title, he was a trespasser as against that State, as to all his possessions and improvements, *wherever* situate on said section. He was a trespasser in either event, whether the State held the title or did not hold it.

On this subject, the Supreme Court of the United States in the case of *Cooper vs. Roberts,* referred to in the finding; say: "The defendant does not claim in privity with Michigan, but holds an adverse right, and is a *trespasser* upon the land, to which her title is attached.

Cooper vs. Roberts, 18 How. 182.

As to the defendants' possession.—They were not trespassers, for they acquired their possession lawfully, that is by the act of the law under a writ of possession.

A possession short of 20 years cannot be set up in ejectment, as a superior title against another possession lawfully acquired.

Therefore the plaintiff can claim no title by prior possession. The doctrine of title by prior possession applies in a case, where there has been an entry or ouster by a trespass, or without lawful right, and cannot apply where the entry or ouster is under a writ of possession and therefore lawful.

Johnson vs. Lancaster, 5 Geo. 39.

5. The plaintiff claims only by record title, his patent. He must establish its validity in the first instance, and if he fail to do so, his case falls.

In case of such failure, the defendants are relieved from making any independent defense, for they hold the title by admitted possession.

and they can here, as they could have done in the court below, safely submit to the judgment of the court without proofs of other title on their part.

In addition to their admitted title by possession, they did, however, see fit to introduce proofs both of their title by possession, and of their record title as derived from the State of Michigan by a State patent. But this was unnecessary and is unimportant here for the following reasons, viz:

1. Because, if they fail in their record title, their admitted title by possession will still hold as a valid *prima facie* legal title and seizin in fee.

2. Because the questions of the validity of the plaintiffs' patent from the United States, and of the title of Michigan, are raised on the face of the plaintiffs' patent, which declares that it is issued under the acts of Congress of March 1st, 1847, and Sept. 26th, 1850, and expressly reserves the right of the State to the lands in dispute, under the act of Congress of 23d June, 1836, making the grant to the State. (p. 20, subd. 13. Copy of patent, p. 45.)

3. Because, if the plaintiffs' patent is valid, the defendants claim no superior title in opposition to it: and if invalid, they are not put on their defense, but wholly relieved by the plaintiffs' own case, making no title in himself, and a *prima facie* title in the defendants.

4. Because, if the plaintiffs' patent be valid, the outstanding title would appear to be in the State, until the defendants make due proof of their derivative title from the State, and an outstanding title in a third person is as good a defense in ejectment as title in the defendants, or as if such outstanding title be traced into the defendants.

In fact, if the plaintiffs' patent be valid, his case does not put the defendants upon their defense; even as to that part of the demanded premises, concerning which a question of boundary was raised in the court below; for that question, it must be remembered was raised on the defense by the defendants themselves, under the proof of their derivative record title, and with a view of ascertaining the boundaries of the land deeded by Williams and wife to Cooper.

The plaintiffs' sole record title is his United States patent of April 9th, 1852. As he must rely on the strength of his own claim, and as he claims only under his patent, he must recover on its validity, or not at all.

If he fail to establish its validity as to section 16, it matters not whether Michigan can show a good title, or the defendants show a good title derived from her, or cannot do so. *Such failure ends the*

plaintiffs' claim to the whole of the demanded premises, and ends the whole case, by disposing of every question in it.

If on the facts found his patent be valid, he must have judgment; and if invalid, the defendants must have it, unless there is error on the questions of evidence, which vitally affects the patent, and immediately respects the construction of the acts of Congress drawn in question, to be passed upon by this court.

The principles above referred, enter into the basis of the law of ejectment, and are too well settled to require further support.

The validity of the plaintiffs' patent being, as is shown above, the comprehensive point of the case, covering the various questions arising under the grant by Congress to Michigan, of June 23d, 1836, and the acts of March 1st, 1847, and September 26th, 1850, we proceed to a discussion of these questions.

QUESTION II.

Under the compact for the admission of Michigan into the Union, and the grant by Congress of June 23d, 1836, when did the title of the State attach and become a legal title?

This question involves a full inquiry into the nature and effect of the compact between the United States and State of Michigan, for the admission of that State into the Union. This compact had its objects and considerations, embracing a settlement of the boundary dispute between that State and Ohio, the admission of Michigan into the Union, and various propositions and conditions, agreed on and expressed in the terms of the compact. Said compact, so far as it relates specially to this case, was as follows:

The Compact.

The constitutional convention of Michigan, by ordinance Nov. 23, 1835, submitted to Congress certain propositions. It declares that these, if assented to by Congress, or such changes or new propositions as the Legislature of Michigan might agree to, should be considered *Articles of Compact* between the United States and that State, and obligatory on the State.

The first of these propositions was in these words:

"Section number sixteen, in every *surveyed* township of the public lands, and where such section has been sold or otherwise disposed

of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

Vol. 1, Ex. Doc. No. 8, p. 16, 1st Sess. 24 Cong. 1835-36.

Congress responded to these propositions by the act of 23 June, 1836, rejecting them, and offering in lieu of them, certain other propositions.

The act declares that these new propositions, if accepted by the State, "*shall be obligatory on the United States.*" It also declares that these new propositions were submitted on condition that the Legislature should bind the State, "by an ordinance, *irrevocable witout the consent of the United States*," not to do certain acts therein enumerated.

The first of these new propositions was in these words, viz: "That section number sixteen in *every township* of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

1 Comp. L. Mich. p. 38. 5 U. S. Stat. 59.

The Legislature of Michigan responded to these new propositions by ordinance of July 25th, 1836, accepting them, and declaring that it is "*irrevocable without the consent of the United States.*"

1 Comp. L. Mich. 39.

Next, the State assented in convention, December 15th, 1836, to her boundaries as proposed by the act of Congress, June 15th, 1836, (this had been amended by said act of Congress, June 23d, 1836, which submitted the new propositions as aforesaid,) and Michigan was admitted into the Union by act of Congress, January 26th, 1837.

1 Comp. L. Mich. 41, 42, 43. 5 U. S. Stat. 144.

Thus the compact became complete, final and *forever obligatory* upon the parties to it.

CONSTRUCTION OF THE GRANT MADE BY THE COMPACT.

1. *It is to be construed on principles analogous to those of a treaty.*

It is part of a public compact between sovereignties having power to make it.

Its objects were of a general and public character.

It has the forms and effect of a solemn and legislative compact.

Wheaton says of express compacts between nations, "they are familiarly called *laws* by analogy to the proper use of that term."

Wheaton's Laws of Nations, Pt. 1, Ch. 1, p. 51.

It is also continuing and perpetual in its nature. This is necessarily so from the nature of the *subject matter.*

It belongs to the class of general compacts, which Wheaton calls *transitory conventions.* These, he says, "are perpetual in their nature, so that, being once carried into effect, they subsist independent of any change in the sovereignty and form of government of the contracting parties."

"Such are treaties of *cession, boundary or exchange of territory.*"

Wheaton's Laws of Nations, Pt. 3, Ch. 2, p. 310.

If a treaty be accomplished on one part, the other party is indispensably bound to perform the other part.

Vattel p. 274, sec. 192.

The public compacts, called conventions, articles of agreement,

&c., when they are made between sovereigns, differ from treaties only in their object. They are of the same validity, and the same obligations and rights flow from them.

Vattel 283, sec. 206.

Compacts between nations can be and often are entered into by legislation as well as by diplomatic negotiations.

2. *The grant is to be construed, as being irrevocable and unalterable, without the consent of the contracting parties.*

It is such by its terms as well as by its nature. The United States can no more destroy or impare the obligation of the grant, than resume it without the consent of Michigan.

Fremont vs. U. S. 17, How. 558-9.

3. *The grant is to be construed as a charitable or beneficent grant, liberally.*

It is "for the use of schools."

The rule applies, that, if ambiguous, it is to be sustained or enlarged, rather than impaired or restricted, by construction.

Section 16 was the chosen section, because it is near the township centre, the probable site of its principal settlement or village, and therefore likely to enhance the value of the grant.

4. *The grant viewed as a legislative compact, is to be construed by those rules and principles, which regulate contracts generally.*

In commenting on a law of Pennsylvania for the sale and disposal of her public lands, the court say the law was a contract between the State and the warrant holder, and, "although a State is a party, it ought to be construed according to those well established principles which regulate contracts generally. The State is in the condition of a person, who holds forth to the world the condition on which he is willing to sell his property."

Huidekoper's Lessee vs. Douglass, 3 Cranch, 70.

In reference to a North Carolina grant, it was held that the State stands in the same situation as the contracts of individuals by deed, as to principle.

Dodson vs. Cocke, 1 Over. 319.
Fletcher vs. Peck, 6 Cr. 137.

An *executory* as well as *executed* contract, is protected by the constitution; and whether it be the contract of an individual or of a State.

Fletcher vs. Peck, 6 Cr. 137.

Tested by such principles, the grant, as soon as accepted, became a grant *in presenti*, an executed grant, *a jus in re*, and vested the title and possession immediately in the State, where section 16 had been then surveyed, and not sold or disposed of.

And where said section had not then been surveyed, and not sold or disposed of, it was a grant *in presenti* of an interest or right in the section when surveyed, a *jus ad rem* resting in compact.

In such latter case the grant is like a deed conveying this specific section, with a covenant by the grantor, that he will perfect the grant, by surveying out and laying off this specific section for the grantee.

This obligation of the United States for a future survey gave no uncertainty to the thing granted. *Id certum est, quod certum reddi potest.*

The words "*section*" and "*township*," as used in the grant refer to the system of the U. S. land surveys, which was regulated by law to the numbering of sections. Thus the locality of section 16 in every township was inevitably fixed by law at the date of the grant, and naught remained to perfect the grant, but to survey out and ascertain its lines.

The grant is therefore to be construed, and the obligations of the government in respect to the survey of section 16 are the same as if that system of surveys and the laws establishing it, had been expressly incorporated into the grant, as they clearly are by *implication* and *reference*.

Ludlow's heirs vs. Johnson, 3 Ohio, Cond. 692.

The words "*section*" and "*township*" had a fixed legal meaning under the law, as it then stood, and now stands.

And consequently the government, by granting this *specified lot*, and assuming on itself the obligation to survey it out, divested itself of the power to dispose of it to another grantee. The only power, that remained to the government to dispose of this lot of land, was that paramount power, usually called the right of eminent domain.

The government cannot resume its grant, and a grant is a contract. It is a principle applicable to every grant. that it connot affect pre-existing titles.

New Orleans vs. De Armas, 9 Pet. 236.

Where the legislature has authority to make a grant of lands, such grant, when made, vests an indefeasible and irrevocable title.

Terret vs. Taylor, 9 Cranch 50.
Same case, 2 Pet. Cond. 321.

Says Chief Justice Marshall, "a grant in its own nature amounts to an extinguishment of the right of the grantor, and implies a contract not to re-assert that right; a party, therefore, is always estopped by his own grant.

Fletcher vs. Peck, 6 Cranch, 187.

A grant may be made by a law, as well as by a patent pursuant to a law.

Strother vs. Lucas, 12 Peter, 454.
Fletcher vs. Peck, 6 Cranch, 128.

A grant may be made by a law or treaty, as well as by a patent.

Stockton vs. Williams, 1 Doug. Mich. 546.

It has never been the practice of the government to issue patents in the case of like grants to the States.

5. *The grant is to be construed in the light of that construction which has been given to it by the contracting parties.*

That the State has construed the grant as herein contended it should be, need not be argued.

That the same construction has been given to the grant by the general government, is fully evidenced by the action of Congress, the action of its Land Department and Officers, and its historical land policy, reaching nearly to the adoption of the Constitution.

They have all alike endeavored sacredly to guard and preserve school section 16, under similar grants or appropriations, in the Territories as well as the new States, and have treated them as *actual* and *in presenti* grants.

ACTION OF CONGRESS.

As early as May 20th, 1785, Congress passed a "general ordinance for ascertaining the mode of disposing of lands in the Western Territory," in which it was provided as follows: "*There shall be reserved the Lot No. 16, of every township, for the maintainance of Public Schools in said township.*" Said act also prescribed the form for deeds of townships or fractional parts of townships, which directed, among other things, that there should be excepted and reserved from the sale "Lot No. 16, for the maintainance of Schools."

Here we find the beginning of the reservation of Lot No. 16 for School purposes.

This general reservation of Lot No. 16, for School purposes, was observed in the subsequent grants and dispositions of the public lands in the new Territories and States.

It was observed in the various compacts for the admission of new States. Lot No. 16 was constantly excepted, reserved and granted for School purposes, *except where it had already been sold or disposed of*, and in such cases, other equivalent and contiguous lands, as near as might be, were to be selected.

It was so in Ohio. (See Act of 30th April. 1802.)

So as to the lands south of the State of Tennessee. (See Act of March 3d, 1803.)

So as to the Territory of Orleans and District of Louisiana. (See Act of April 21, 1806.)

So in respect to lands generally of the U. S. (See Act of March 31, 1808.)

So again as to Territories of Orleans and Louisiana. (See Act of 15th February, 1811.)

So as to lands under Treaty with the Creek Indians. (See Act of March 7, 1815.)

So in Indiana. (See Act of April 19, 1816.)

So as to tract of Land at the British Fort of the Miami of the Lake, ceded by several Indian tribes. (See Act of April 27, 1816.)

So in Illinois. (See Act of April 18, 1818.)

So in Alabama. (See Act of March 2, 1819.)

So again as to certain lands not before offered for sale in Ohio and Indiana. (See Act of March 3, 1819.)

So in Missouri. (See Act of March 6, 1820).

So as to public lands in Mississippi. (See Act May 6, 1822.)

Like grants of Section 16 for School purposes were made, in the same terms, it is believed, to the States of Arkansas, Wisconsin, Iowa and Minesota, and other new States, on their admission into the Union.

These numerous acts of legislation, each constantly providing for setting apart Lot No. 16 for School purposes were but repetitions of the general exception and reservation contained in the ordinance of 1785, before cited, and confirmations thereof, and of the prevailing policy of the Government in respect to such section.

Pre-emption Claimants Exeluded by law from Section 16.—The 3d Section of the Act of February 27th, 1815, which related to lands in the Illinois Territory, provided that persons who had settled on and improved any of the School lands, before a certain period,

and who would have had the right of pre-emption thereunto, *had not the same been reserved*, shall be entitled to the pre-emption of the like quantity of other land. This act was passed while Illinois was but a Territory. The 3rd Section above referred to, by its terms, applied *as well to land which had not yet been surveyed* and designated by sections, as to that which had been so surveyed and designated. Yet settlers were not allowed to hold as pre-emption claimants, lands which should on survey appear to be included in School Section 16. They must select like quantities elsewhere.

The same legislation occurred against pre-emption claimants in Alabama, Mississippi, and the Territory of Florida. See Act of April 22d, 1826. By the 4th Section of that Act, pre-emption claimants to the School Sections were allowed to select other lands adjacent and of the like quality.

It is believed that *not a single land act of Congress can be found, that undertakes to make a new grant or appropriation of section* 16, *after being once granted or appropriated as a School Section*, whether it was surveyed or not surveyed.

THE ACTION OF THE UNITED STATES LAND DEPARTMENT AND ITS OFFICERS.

This has been uniformly consistent with the legislation and policy of the government; no single departure, it is believed, having occurred, or been attempted, except that before noticed in this case, and which was promptly and fully corrected by the decision of the Secretary of the Interior, of September 10th, 1852.

INDIAN RESERVATIONS.

A few cases have arisen under Indian Reservations, conflicting with prior like grants of school section 16. In these cases, the Indian Reservation has been held to give the paramount right. But this was very correctly so held on the obvious ground that the Indian title never having been extinguished, it was a pre-existing title at the date of the school grant. The Indian title has always been recognized by the government, and an Indian Reservation recognizes and continues that title.

THE CASE UNDER THE CHOCTAW TREATY.

In this case, the Indian Reservations under the treaty—which proved afterwards to include Section 16—were not considered as a *new* disposition of such section, but as a mere recognition of the

Indian title or disposition which existed at the period of the grant, and which the government was obliged to recognize in order to effect the treaty.

(See opinion of Attorney General Butler, of March 31st, 1836.) The grant of section 16 to the State of Alabama was made in 1819, and expressed in the same language as that of the grants to Ohio and Michigan. Certain reservations made by the Choctaw Treaty of 1830 included section 16, and the question arose whether the State or the reservees should hold the section so included. It was very justly held by the Attorney General, that the United States could make no grant of the Choctaw country, except subject to the Choctaw right of occupancy, and the original grant of section 16 was, from necessity, subject to the Indian title existing at the period of the grant. In making the treaty, the government agreed to reservations, which included certain sections 16, and thus, as to such sections, failed to extinguish the Indian title, and was therefore unable to make good its grant to the State of Alabama.

The Attorney General still held in this case, that the government was bound to execute its grant to the *letter, so far as might be in its power.* He says: "This proposition, having been accepted by the convention, became, and is, *obligatory on the United States*, that is to say, *the faith of this nation is pledged to execute it literally, provided the government possess or acquire the ability to do so.*" "Reason and good faith require that it be executed *from time to time, as fast as the United States shall be able to designate the sections, and convey a good title therein.*"

The same construction of the grant, here contended for, was given by the Treasury Circular to the Registers of Ohio, of July 11th, 1805, and that to the Registers of Michigan, of February 14th, 1837, each issued just after the admission of those States into the Union, and each having for their objects the strict execution of the like school grants contained in the compacts for their admission into the Union.

Pub. Lands, Laws, Instructions and Opinions, Part 2, Nos. 198, 474.

Ohio was the first of the new States admitted into the Union, with the grant of section 16 for the use of Schools.

A full examinatton would doubtless show that the Registers of all the new States have received in substance like instructions as those contained in said circulars to the Registers of Ohio and Michigan, and giving to the grant the like construction here contended for.

But, in a *single* instance, there was an attempted departure, having special reference to the present case, as detailed herein before, and in the special finding.

First came the Treasury Circulars of April 16th and 25th, 1848, prepared by John Wilson, a clerk, Richard M. Young being then a Commissioner of the General Land office, and Robert J Walker, Secretary of the Treasury. Next the decision of the commissioner, (Butterfield), of April 22d, 1851, adverse to the State of Michigan.

Next, after said Butterfield's decision, came the decision of the Secretary of the Interior, of September 10th, 1851, in favor of the State, and reversing said decision of Butterfield. Next, the decision of the Land Officers at Sault Ste Marie, of Nov. 10th, 1851, in favor of the State. Next, the decision of the Commissioner of the General Land Office, of December 15th, 1851, confirming said decisions of the Land Officers at Sault Ste Marie, in favor of the State. And next, and finally, the second decision of the Secretary of the Interior, of February 4th, 1852, re-affirming his former decision in favor of the State, of September 10th, 1851, but consenting that the *anomalous* patent might issue to the plaintiff, reserving the right of the State, for the purpose of enabling him to bring a law suit for the land patented.

In the course of these proceedings, we find what is believed to be the *only attempt at a departure from the construction of the grant here contended for, ever made in the Land Departmant of the general government.*

[The counsel for the defendants deems it proper here to refer, as part of his argument, to the opinions of said Walker, Young and Butterfield, in letters to him dated in 1851, each construing the grant as here contended for by the defendants, said letter of Butterfield being an official letter. Said circulars, it appears, were prepared by John Wilson, a clerk in the General Land Office. According to said opinion of Young, and said official opinion of Butterfield, the attempt to sell section 16 according to the said circulars of April 16th and 25th, 1848, originated in erroneously interpretating the Act of March 1st, 1847, as *not excepting* the school sections from sale, and that they, as ministerial officers, ought to follow the act as thus interpreted by them, though they held it to be in violation of the grant to the State.

Butterfield thus concludes his said official letter of February 5th, 1851: "*There is no doubt but that Michigan is entitled to section 16, when it had not been sold or otherwise disposed of, prior to her admission into the Union;* and if a case should arise where it may be sold under the provisions of the Act of 1847, she can take exceptions to it, and *Congress* can provide such special relief as she may be entitled to.]

6. *The grant is to be construed in the liyht of any subject-matters existing at its date, and referred to, which will tend to explain it, and show the intentions of the parties.*

The words "*section*," and "*township*," clearly refer to the system of land surveys of the United States, as established by law. Hence, as hereinbefore claimed, that system, and the laws establishing it, are to be considered as having been in the minds of the grantor and grantee, at the making and acceptance of the grant, and as having been incorporated into it by clear implication and reference.

The grant construed in this light, as to sections 16, not then sold or disposed of, and not surveyed, required only their legal survey and designation, in order to become complete.

THE PHRASE "*Has been sold or otherwise disposed of.*"

These words also refer to a subject-matter existing at date of the grant.

It is contended by the plaintiff that these words refer to *future* sales and dispositions; sales and dispositions after the grant, but prior to the survey, as well as those which had occurred at the date of the grant.

Such a construction claims for the government the absolute right to sell and dispose of, at will, all the unsurveyed school sections. It claims it until they are surveyed; and the government, the grantor, is also to determine, at will, when, if ever, the survey shall be made.

By a strange *grammatical compound*, it applies the past tense, "*has been*," both to the *past* and *future* at the same moment.

It gives to the grant an uncertainty wholly inconsistent with its designs. The practice and policy of the government have always been designed to give such grants certainty and permanence. These are their most esseatial qualities.

THE ORIGIN OF THE LANGUAGE OF THE GRANT.

The same phraseology is first found in the grant to Ohio, on her admission into the Union, in 1802 Under the act of the 18th May, 1796, providing for the sale of lands in the North-west Territory, there were to be *no reservations* except for *salt springs*, and it had hence resulted that some of sections 16 *had been sold* at the date of the grant, when Ohio was admitted into the Union.

Here in Ohio, in 1802, we discover the true origin and meaning of the words, "*has been sold or otherwise disposed of*," and of the provision for selecting other equivalent and contiguous lands, to supply the place of such sections 16, as had been *at that time* sold or otherwise disposed of. Here we find a *past existing subject-matter*, to which the phrase in the past tense, "has been sold, etc.," could and did both naturally and grammatically apply.

Such was the contemporaneous construction of the Treasury Department, then the Land Department of the government, of the phrase now in question. This appears from the Circular of Instructions before referred to, as issued to the Registers of Ohio, July 11th 1805, which relates wholly to the Ohio school grant, and, in interpreting it, *it expressly and frequently refers to the prior and past sales*, as those to which the phrase in question applies.

Pub. Lands, Laws, Instructions and Opinions, Part 2, No. 198.

The like grants to the other new States are expressed in the same phraseology as the grant to Ohio, and *precisely the same necessity* as in Ohio for adopting the phrase in question, would probably exist in each of those States, when they were admitted into the Union.

Various sections 16 *in Michigan had been sold* when she was admitted into the Union. (This appears from an examination of the records of the Land Office.) The phrase in question applied to this subject-matter in Michigan as in Ohio. The Land Department gave it the same contemporaneous construction *by expressly applying it in Michigan to those prior and past sales.* The Treasury Circular on this subject before referred to, of Feb. 14th, 1837, to the Registers of Michigan, says thus:

"You are required to report at this office, the selections made in your district, of substituted school lands for townships in which the 16th section *has been* sold or otherwise disposed of."

Pub. Lands, Laws, Instructions and Opinions, Part 2, No. 474.

7. *The grant is to be construed in the light of the preliminary proposals of the compact.* The *proposal of the State* was for "section 16 in every *surveyed* township, etc.," and the accepted *counter proposal of Congress* was for "Section 16 in every *township, etc.*"

Thus it was understood and intended by the parties, that the grant should embrace all the unsold sections 16, whether surveyed or not.

8. *The grant is to be construed as a present grant.*

This point has been partially considered, under a preceding one, which claims, that the grant is to be construed by those rules and principles which regulate contracts generally.

Under that point, the grounds were taken that the grant, as to sections 16, then surveyed, but not sold or otherwise disposed of was a present grant—a *jus in re*—and as to those not then surveyed, and not sold or disposed of, it was a present grant of an interest in, or right to, the sections when surveyd, a *jus ad rem.* resting in compact.

Under that point, the further ground was taken that the grant required no patent to sustain it, but may be made by a law or treaty, as well as by a patent, and the cases cited of

Strother vs. Lucas, 12 Pet. 454.
Stockton vs. Williams, 1 Doug. (Mich.) 546.

Under that point was also cited the universal practice of the government in making like grants to the new States, without issuing patents to sustain them.

THE PHRASE "SHALL BE GRANTED."

"The case of *Stockton v. Williams*, above cited, arose under an Indian treaty, by which certain quantities of land were reserved to certain persons named, to be located in future, as the President might direct, at and near the Grand Traverse of Flint river. The words were, "*there shall be reserved, etc.*" These were held to constitute an executed grant, to convey a present interest and fee simple.

It has heretofore, and will probably be again, claimed for the the plaintiff, that the words of the grant, "*shall be granted,*" are not sufficient to vest a present interest.

Chief Justice Marshall passed directly on like words, in Greene's case, where the language of the grant was, "that 25,000 acres of land *shall be allotted for and given* to Major General Nathaniel Greene for his services, etc."

The Court say: "On the part of the appellant, it is contended that these words give nothing; they are in the future, not in the present tense, and indicate an intention to give in the future, but create no present obligation on the State, or *present interest* in General Greene. The Court thinks differently. The words are words of *absolute* donation, etc."

Again, the Court in that case say, "25,000 acres of land shall be allotted for, and given to, Major General Nathaniel Green. Given when? The answer is unavoidable: When they shall be allotted. Given how? Not by any *future* act, for it is not the practice of legislation to enact that a law shall be passed by any future Legislature; but given by force of this act."

And again, the Court in that case say: "It has been said that to make this an *operative* gift, the words 'are hereby' should have been inserted before the word 'given,' so as to read 'shall be allotted for and *are hereby* given,' etc. Were it even true that these words would make the gift more explicit, which is not admitted, it surely cannot be necessary now to say that the validity of a legislative grant depends in no degree on its containing the technical terms used in a conveyance."

Rutherford vs. Greene's Heirs, 2 Wheat. 197-8.

In a grant by statute, any language which expresses the legislative intention to invest the party with a title is sufficient.

Trustees vs. Payne, 3 T. B. Mon. 161.

The words of the grant to Michigan are, "*shall be granted.*" Granted when? The answer is unavoidable: Immediately, if the sections are surveyed, and if not, at least as soon as they are. Granted how? The answer is equally unavoidable: "Not by any *future* act, but by force of *this* act."

9. *The grant is to be construed in the light of the decision of the Supreme Court of the United States in the said ejectment suit of Cooper v. Roberts*, involving all the vital facts and questions of the present case.

In that case the court say: "Our first inquiry will be into the nature of the right of the State of Michigan to section 16, in the

townships of that State, and the effect of the discovery of minerals in such section upon that right."

Under that inquiry the court say of these school grants: "There is obviously a definite purpose declared to consecrate the same central section of every township of every State, which might be added to the federal system," etc.

Under the same inquiry, they say of the policy of the government in reserving from sale lands containing minerals: "But the compacts have been made *without* such a reservation, nor has the usage of the land office interpolated such an exception to the general grant of the section No. 16 for the use of schools."

The court designate the grant as "an *unalterable* condition" in the admission of Michigan into the Union, and they conclude their first inquiry as follows: "We agree that until the survey of the township and the designation of the specific section, the right of the State rests in compact, binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object upon which it can attach, and if there is no legal impediment, the title of the State becomes a legal title. The *jus ad rem*, by the performance of that executive act, becomes a *jus in re*, judicial in its nature, and under the cognizance and protection of the judicial authorities, as well as the others—*Gaines vs. Nicholson*, 9 *How.* 356."

Cooper vs. Roberts, 18 How. 179.

On these principles the court next proceed to consider the question whether the act of 1847 created any legal impediment to prevent the title of the State from becoming a legal title.

QUESTION III.

Was the act of Congress of March 1st, 1847, a legal impediment to prevent the title of the State of Michigan from becoming a legal title?

This act established a new policy in respect to the mineral lands,

ACT OF MARCH 1, 1847.

9 U. S. STAT. 146.

AN ACT to establish a Land Office in the northern part of Michigan, and to provide for the sale of Mineral Lands in the State of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the Public Lands in the State of Michigan lying north of the boundaries of the Saginaw and Grand River land districts in said State, commonly called the Northern Peninsula of the State of Michigan, with the Islands in Lake Superior, Huron and Michigan, and in Green Bay, the straits of Michilimackinack, and the river St. Mary's, within the jurisdiction of said State, be and the same are hereby included in a land district, to be called the Lake Superior Land District, and for the sale of the lands in said district there shall be a land office established at such point therein as the President of the United States may select.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury shall cause a geological examination and survey of the lands embraced in said district to be made and reported to the Commissioner of the General Land Office. And the President is hereby authorized to cause such of said lands as may contain copper, lead, or other valuable ores, to be exposed to sale, giving six months' notice of the times and places of sale in such newspapers of general circulation in the several States as he may deem expedient, with a brief description of the lands to be offered: showing the number and localities of the mines known, the probability of discovering others, the quality of the ores, the facilities of working the mines, and the means and expense of transporting their products to the principal markets in the United States. And all the lands embraced in said district, not reported as aforesaid, shall be sold in the same manner as other lands under the laws now in force for the sale of the public lands, excepting and reserving from such sales section sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses.

SEC. 3. *And be it further enacted*, That all those persons who are in possession, by actual occupancy, of any portion of the district described in the first section of this act, under authority of a lease from the Secretary of War, for the purpose of mining thereon, and who have fully complied with all the conditions and stipulations of said lease, may enter and purchase the same at any time during the continuance of such lease, to the extent of such lease, and no less, by paying to the United States therefor at the rate two dollars and fifty cents per acre: *Provided*, That said entry and purchase shall be made to include the original survey of such lease, as near as may be conforming to the lines of the public surveys of sections and subdivisions thereof. And all those persons who are in possession, by actual occupancy, of any of said lands, for mining purposes, under authority of a written permit from the Secretary of War, and who have visible land marks and muniments as boundaries thereon, and who have in all other respects, complied with the conditions and stipulations contained in such permit, may enter and purchase the same, to the extent of the tract selected by them and reported to the Secretary of War, as required by said permit, and no less, in the same manner as those who hold under leases, and at the same price: *Provided*, Suc

entry and purchase be made before the day said lands shall be offered for sale by order of the President. And all those persons who shall be in possession, by actual occupancy, of a mine or mines actually discovered before the passage of this act, and who shall pay the same per centum of rents as those who hold under leases as aforesaid, shall be permitted to enter and purchase one section of land, and not less, to include such mine or mines discovered and occupied as aforesaid by them, by paying to the United States the same price, and at the same time, as required of those who hold under permits aforesaid; and all rents accruing from such lessees or occupants shall be paid and delivered to such officers of the Government as the Secretary of the Treasury shall direct: *Provided*, That prior to any such purchase being made under the provisions of this section, proof of possession and occupancy, as aforesaid, of the mine or mines claimed, shall be made to the register and receiver of the land district, together with the evidence of the payment of all rents due the United States, agreeably to such rules as may be prescribed by the Secretary of the Treasury for that purpose, which register and receiver shall each be entitled to receive one dollar for his services therein:—*Provided*, That an appeal from the decision of the register and receiver to the Secretary of the Treasury may be had, under such regulations as the said Secretary may prescribe. And if two or more persons are in possession of the same section, the first occupant shall be entitled to a preference, unless the same can be divided by legal subdivisions as to give to each the discovery claimed by him.

SEC. 4. *And be it further enacted*, That the said mineral lands shall be offered for sale in quarter sections, and no bid shall be received at a less rate than five dollars per acre; and if such lands shall not be sold at public sale at such price, they shall thereafter be entered at private sale at that price: *Provided*, That no legal division or subdivision of any of said lands upon which there may be an outstanding lease or leases from the Secretary of War unexpired or undetermined, and which is actually occupied for mining purposes, and the occupants of which have complied with all the requisites of such lease or leases, and continue to perform the same, shall be sold until after the determination of such lease or leases by efflux of time, voluntary surrender, or other legal extinguishment thereof, except in such cases as are provided for in the third section of this act, and the lessees respectively shall be entitled to the privileges secured by said section upon the voluntary surrender of the lease or leases held by them.

SEC. 5. *And be it further enacted*, That the management and control of the mineral lands shall be transferred from the War Department, and placed under the jurisdiction and control of the Treasury Department; and all books, maps, papers, instruments, and other property procured, to be used and employed in the management, survey, exploring, or conducting of said mineral lands by the War Department, shall be delivered over and made subject to the disposition of the Secretary of the Treasury.

SEC. 6. *And be it further enacted*, That the President, by and with the advice and consent of the Senate, so soon as a sufficient number of townships are surveyed, and returns thereof made to the General Land office, to authorize the commencement of the sales in said district, shall appoint one register and one receiver for the Land Office in said district, who shall reside at the place designated by the President for the Land Office, receive such compensation, give security, and discharge all duties pertaining to such office as are prescribed by law.

Approved March 1, 1847.

by providing for their sale instead of reserving them, as had been the former policy of the government.

The 1st section creates a new land district. What lands did it include? "The *public* lands, etc.," to use the language of the section. Whose lands? Those of the United States.

The 1st section also establishes a land office "for the sale of the lands in said district," to use the language of the section. What lands? "The public lands, etc.," not then sold or disposed of. Whose? Those of the United States; not those of Michigan already granted to her by a solema act of legislation.

With what show of reason, is it contended by the plaintiff, that this section is to be construed as intending to establish a land office, for the sale of lands which the government had already solemnly disposed of and appropriated to a sovereign state, as a public beneficence to present and future generations?

ANALYSIS OF SECOND SECTION.

This section first provides for a geological survey and report to the government. What lands were to be surveyed? "The lands embraced in said district," to use the language of the section. These, according to the 1st section, are "*the public lands*," meaning the public lands of the United States.

This geological survey was a preparatory step, with a view to selling and getting a better price for the lands of the United States containing minerals.

It was no part of the geologist's duty to survey the lands of Michigan. This he *could* not do until *after* the land survey into townships and sections, and consequently *not till after* the title of Michigan had become fully vested in sections 16 under the grant.

This section next provides for two kinds of sales. 1st of the mineral lands; 2d of the non-mineral lands, and closes with an exception general in its character, and operating on *both* kinds of sales, as by its own terms, it excepts and reserves section 16 "from such *sales*" (not from such *sale*.) *Both kinds of sales are therefore restricted by the exception and reservation.*

The whole section, considered gramatically, is a series of connected provisions for the sale of the said lands, *all qualified by and subject to the general exception of section* 16 *and reservations by the President for public uses.*

The exception of the school grant and the Presidential reserva-

tions, both stand on the same footing, and it is very unreasonable to suppose that the President was to be denied the Government right of making a reservation for public uses, on either or both classses of the lands, as he might deem necessary.

In fact, the 2d section, in the clearest and most express terms, *excepts* from sale the school sections 16, whether containing minerals or not. It leaves no room for question, and it is difficult to see why or how the opposite view should ever have been claimed.

THE CONSTRUCTION CONTENDED FOR BY THE PLAINTIFF IS ERRONEOUS.

1. Because this section and the whole act operate and were intended to operate only on the lands of the United States.

2. Because the object of the geological survey was to better the price of certain lands of the United States by distinguishing the mineral from the non-mineral lands.

3. Because the land-survey into townships and sections, which would immediately perfect the title of the State to sections 16, not then sold or disposed of *preceded* the geological survey.

The land survey was made in 1847 *; the geological survey in* 1849.

Thus the title of the State attached and became perfect before section 16 *was or could be recognized as containing minerals.*

4. Because the whole section is a grammatical series of *connected* provisions for the sale of *all* the lands in the district, subject to a *common* exception and reservation.

5. Because the exception and reservation both stand on the *same* footing, as restrictions to selling; and the construction contended for by plaintiff *limits* the right of reservations for public uses to but *one* class of the public lands, which is inconsistent with the former practice, policy and legislation of the government, in respect to government and presidential reservations.

6. Because the section *expressly* excepts and reserves school sections and Presidential reservations, from *both* classes of lands, and from *both* kinds of sale. ("From such *sales*," is the language of this section).

7. Because, as a rule of law, *subsequent* legislative acts which are claimed to appropriate lands already appropriated or reserved by former legislative acts or grants, are not to be construed as *conflicting* with the former, unless expressed in terms admitting of

no doubt, and showing a clear design to effect the object. And wherever, in such a case, there be a doubt, it is to be construed, and every legal presumption and inference are to be given in favor of the first appropriation or grant, and with a view to sustain it.

Says chief Justice Marshall, "whatever the legislative power may be, its acts ought never to be so construed as to subvert the rights of property, unless its intentions to do so shall be expressed in such terms as admit of no doubt, and show a clear design to effect the object. No general terms intended for property to which they may be fairly applicable, and not particularly applied by the legislature; no *silent implied* and *constructive repeals* ought ever to be so understood as to divest vested rights."

Rutherford vs. Greene's Heirs, 2 Wheat, 203.

The principle was extended still further in the case of *Jackson vs. Wilcox*. The President had reserved a tract of public lands for a military post. There was no vested right in the land except the right of the government, nor obligation not to make such other disposition of it, as Congress might deem expedient, and it possessed an undoubted power to order it to be sold or to give a pre-emption right to it. Afterwards an act was passed giving a right of pre-emption to settlers in that district of country, which, it was claimed, made no exception of military reservations. The court hold, that it made no difference whether the pre-emption law did or did not except this land which had been before appropriated to a public use; and that it will not be presumed to embrace such prior appropriation, unless the intention be clearly expressed, and not left to inference from the silence of the law.

The court say: "Wheresoever a tract shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and that *no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it, although no reservation were ever made of it.*" "The right of pre-emption was a bounty extended to settlers and occupants of the public domain; we cannot suppose this bounty was designed to be extended at the sacrifice of public establishments or great public interests."

Jackson vs. Wilcox 13 Peters, 513. 514.

The doctrine of that case was re-affirmed in the case of the *United States vs. Gear*, which lays the rule down in these words:

"The rule is that a perpetual statute, (which all statutes are, unless limited to a particular time), until repealed by an act professing to repeal it, or by a clause or section of another act directly bearing in terms upon the particular matter of the first, notwithstanding an implication to the contrary may be raised by a general law which embraces the subject matter, is still to be considered the law in force as to the particulars of the subject matter legislated upon."

And the Court add: "Thus, in this case, *all* lands within the district mean lands, in which there are, and in which there are not, minerals or lead mines; but a power to sell *all* lands, given in a law, *subsequent* to another law expressly reserving lead mine lands from sale, cannot be said to be a power *to sell the reserved lands*, when they are not named, *or to repeal* the reservation."

U. S. vs. Gear, 3 How., 131.

The reported cases show many and very strong applications of the rule.

2 Dwarr. on Stat. 638, 673.
Easton Bk. vs. Com., 10 Barr., 442, 448.
Dore vs. Grey, 2 Term R., 365.
Rex vs. Barton, 12 Adolph & Ell., 470.

One ground for the application of the rule is:—where there is a difference in the whole purview of two statutes apparently relating to the same subject, the former remains in force.

2 Dwarr on Stat. 674.
Reg Downes 3, Term R. 569.
Gholson vs. Burk, 15 East 377.

The purview of the acts of June 23d, 1836, and that of March 1st, 1847, as to the main objects to be accomplished, are wholly

different. Those of the former were the settlement of a disputed state boundary, the admission of a State into the Union, and provisions for schools, for a University, for the erection of public buildings, and for making roads and canals.

Those of the latter were, 1: The establishment of a new land district, and a new land office. 2, A geological survey, with a view to get a better price for mineral lands. 3. A sale of all the lands in the district, except as expressly excepted and reserved, with a preferred right to the lessees to enter and purchase their leased lands at an increased price, provided they did so during the continuance of their leases. 4. A transfer of the control of the mineral lands from the War to the Treasury Department.

The whole purview of the act of 1847 may thus be summed up, so far as it concerns this case. It provides for a sale of *all* the public lands in the district, *excepting and reserving sections* 16 *and Presidential reservations for public uses*, with a pre-emption right to the lessees to enter and purchase their leased lands, provided they did so *during the continuance of their leases.*

According to a familiar rule of law, so far as the act of March 1st, 1847, is *in pari materia* with prior laws disposing of the public lands, it should, if possible, be construed so as to be consistent with such prior laws. They should be construed together as forming a system.

Statutes, not in terms retrospective, should not be so construed as to affect past transactions, especially when such construction would work injustice.

Quackenbush vs. Danks, 1 Denio, 130.

And where statutes apparently conflict with each other, they are to be reconciled as far as may be, by any fair hypothesis, so as to preserve the titles to property undisturbed.

Beales vs. Hale, 4 How. 51.

This principle applies with still greater force, in a case, where it is sought by construction to disturb public institutions, rights and interests.

8. The construction contended for by the Plaintiff, is erroneous, because, even if the act of 1847 had in general terms directed the sale of *all* the lands in the district, but was *silent* as to the lands previously dedicated and granted to schools, it would not have the effect to divert them from this special use.

Rutherford vs. Greene's Heirs, 2 Wheat., 203.
Jackson vs. Wilcox, 13 Pet. 513.
United States vs. Gear, 3 How. 131.
Snell vs. Bridgewater Manufacturing Co., 24 Pick. 296–'7.
Goddard vs. Boston, 20 Pick. 407.
Brown vs. Lease, 5 Hill, 221.
Wyman vs. Campbell, 6 Port. 219.
Planters' Bank vs. State, 6 Smeades & Marsh, 628.
Street vs. Commonwealth, 6 Watts & Sergt. 209.
Atwater vs. Woodbridge, 6 Conn. 229.
Williams vs. Pritchard. 4 Term Rep. 2.

9. The construction contended for by plaintiff is an *odious* construction.

"What tends to render an act null and without effect either in whole or in part, and consequently whatever introduces any change in things already agreed upon, is *odious*."

Vattel 332, sec. 304.

10. The Supreme Court of the U. S., the proper tribunal of last resort for a final decision of this case, has settled the construction of the act of 1847, in *Cooper vs. Roberts*, by deciding *that it does except from sale the school section* 16.

The Court thus open this question: "The question now arises, whether the act of 1st March, 1847, created a legal impediment to the operation of this principle (meaning their decision just before given as to the legal title of Michigan under the compact) either by the reservation of the land for public uses, or by its appropriation to superior claims.',

The Court decide this question in the following language:

"To the section (sec. 2) there is added an exception from *such sales*, of section No. 16, "for the use of schools, and such reservations as the President shall deem necessary for public uses." It has been argued, that this exception is only applicable to the lands not

contained in the geological report, and that the mineral lands "were appropriated and disposed of without reference to the school reservation by this section of the act." But it does no violence to the language to embrace within the exception *all* the sales for which the section provides, and we cannot suppose that Congress could be tempted with the hope of a small additional price, which is imposed upon the purchasers of the mineral lands, to raise a question upon its compact with Michigan, or to disturb its ancient and honored policy. We think the interpretation which claims this as an exception in favor of Michigan, is to be prefered to that which excludes her from the mineral lands under this compact. And this conclusion is strengthened by the fact that the power of the President to make useful public reservations, is connected in the exception with the school reservations. There could be no reason for limiting the power of the President to a single class of the public lands, and to exclude him from another, in the same district. We conclude that this act does not withdraw the mineral lands from the compact with Michigan."

Cooper vs. Roberts, 18 How. 179-'8.

The Supreme Court of Michigan gave to the act of March 1st, 1847, the same construction in unequivocal terms. And they say in reference to the decision of this Court in *Cooper vs. Roberts*, "their construction of that act is the same which we w[illegible] have felt bound to adopt without its aid."

Minnesota M. Co. vs. National M. Co., [illegible] Mich. and Coope[illegible]

This construction, thus doubly fortified, ought to terminate this case. If now applied it disposes of every other vital question of law, and thus renders further discussion unnecessary.

The plaintiff's patent raises in the outset, and on *its face* the last two questions discussed, viz.: The title of Michigan under the compact; and the right of the U. S. land officers to sell section 16 under the act of 1847.

The defendants relying on this construction, and on the single fact of their lawfully acquired possession, for a *prima facie* legal title, can safely come to trial, without any proof whatever of their title as derived from the State.

8. The construction contended for by the Plaintiff, is erroneous, because, even if the act of 1847 had in general terms directed the sale of *all* the lands in the district, but was *silent* as to the lands previously dedicated and granted to schools, it would not have the effect to divert them from this special use.

Rutherford vs. Greene's Heirs, 2 Wheat., 203.
Jackson vs. Wilcox, 13 Pet. 513.
United States vs. Gear, 3 How. 131.
Snell vs. Bridgewater Manufacturing Co., 24 Pick. 296–7.
Goddard vs. Boston, 20 Pick. 407.
Brown vs. Lease, 5 Hill, 221.
Wyman vs. Campbell, 6 Port. 219.
Planters' Bank vs. State, 6 Smeades & Marsh, 628.
Street vs. Commonwealth, 6 Watts & Sergt. 209.
Atwater vs. Woodbridge, 6 Conn. 229.
Williams vs. Pritchard. 4 Term Rep. 2.

9. The construction contended for by plaintiff is an *odious* construction.

"What tends to render an act null and without effect either in whole or in part, and consequently whatever introduces any change in things already agreed upon, is *odious*."

Vattel 332, sec. 304.

10. The Supreme Court of the U. S., the proper tribunal of last resort for a final decision of this case, has settled the construction of the act of 1847, in *Cooper vs. Roberts*, by deciding *that it does except from sale the school section* 16.

The Court thus open this question: "The question now arises, whether the act of 1st March, 1847, created a legal impediment to the operation of this principle (meaning their decision just before given as to the legal title of Michigan under the compact) either by the reservation of the land for public uses, or by its appropriation to superior claims.',

The Court decide this question in the following language:

"To the section (sec. 2) there is added an exception from *such sales*, of section No. 16, "for the use of schools, and such reservations as the President shall deem necessary for public uses." It has been argued, that this exception is only applicable to the lands not

contained in the geological report, and that the mineral lands "were appropriated and disposed of without reference to the school reservation by this section of the act." But it does no violence to the language to embrace within the exception *all* the sales for which the section provides, and we cannot suppose that Congress could be tempted with the hope of a small additional price, which is imposed upon the purchasers of the mineral lands, to raise a question upon its compact with Michigan, or to disturb its ancient and honored policy. We think the interpretation which claims this as an exception in favor of Michigan, is to be prefered to that which excludes her from the mineral lands under this compact. And this conclusion is strengthened by the fact that the power of the President to make useful public reservations, is connected in the exception with the school reservations. There could be no reason for limiting the power of the President to a single class of the public lands, and to exclude him from another, in the same district. We conclude that this act does not withdraw the mineral lands from the compact with Michigan."

Cooper vs. Roberts. 18 How. 179-'8.

The Supreme Court of Michigan gave to the act of March 1st, 1847, the same construction in unequivocal terms. And they say in reference to the decision of this Court in *Cooper vs. Roberts*, "their construction of that act is the same which we would have felt bound to adopt without its aid."

Minnesota M. Co. vs. National M. Co., ~~11 Mich.~~ and Cooper ~~R. 170.~~ 11 Mich. R. 190.

This construction, thus doubly fortified, ought to terminate this case. If now applied it disposes of every other vital question of law, and thus renders further discussion unnecessary.

The plaintiff's patent raises in the outset, and on *its face* the last two questions discussed, viz.: The title of Michigan under the compact; and the right of the U. S. land officers to sell section 16 under the act of 1847.

The defendants relying on this construction, and on the single fact of their lawfully acquired possession, for a *prima facie* legal title, can safely come to trial, without any proof whatever of their title as derived from the State.

If the act of 1847 excepted section 16 from sale, as held in *Cooper vs. Roberts*, and as also held below in the present case, the plaintiff's patent falls as to such section, and with it falls *their claim to the whole of the demanded premises.*

The plaintiff's case is not that of a patent issued under a *legal* power, claimed to have been *erroneously* exercised, and to be sustained by legal presumptions against error; but of a patent issued without authority, and contrary to law.

A patent issued without authority and contrary to law, is absolutely void on its face, as to the lands thus illegally patented.

Polk's Lessee vs. Wendell, 9 Cranch, 87.
Subsequent case between the same parties, 5 Wheat, 293.
Stockton vs Williams, 1 Doug. (Mich.) 546.
And the authorities generally.

QUESTION IV.

Did the lease of Sept. 16th, 1845, so dispose of the land as to be a legal impediment to prevent the title of the State from attaching and becoming a legal title?

This question is wholly unimportant, if, as before held by this court and the courts below, the act of March 1st, 1847, *excepted section* 16 *from sale.*

But, assuming even the contrary, it must still be answered in the negative, for the following reasons:

1. The act of 1847 was a *proposition* to the lessees. It proposed that they might enter and purchase on certain conditions, one of which is that they might enter and purchase *during the continuance* of their leases. They could accept or reject it, and until accepted it bound them to nothing.

But, if accepted, they must comply with the terms of the proposition, which are conditions precedent to the vesting of an estate in them.

Kent's Com., 4 vol., 125.
2 Black Com., 154.
Vanhorn vs. Dorrance, 2 Dallas, 317.

2. The act of 1847, was a law of *limitation.* By this act Congress authorized the lessees to submit their pre-emption proofs and enter and purchase *during the continuance of the lease.* This is a positive law of limitation as to the time of proofs and of entry.

Congress alone could extend or authorize an extension of that period. What right had the officers of the General Land Office to extend that period, and thus seek to violate or change the positive provisions of a law of Congress?

They might as well have attempted to change the price of the land.

The land officers, in being authorized to hear and decide on the pre-emption proofs of the lessees, were invested with a special power in the nature of a judicial authority, and they were bound to confine their action strictly within the pale of the power delegated.

Wilcox vs. Jackson, 13 Pet. 511.
Elliot vs. Piersol, 1 Pet. 340.

Their action in hearing and deciding on the proofs and allowing an entry and purchase, after the lease had expired, though pursuant to instructions from the Commissioner, was without their jurisdiction, and therefore void. And the Secretary on the appeal to him, had no jurisdiction to direct an issue of the patent, and his instruction for that purpose was also void.

Where special judicial tribunals act, the facts, which give them jurisdiction, must appear on the face of their proceedings.

Greignon's Lessee vs. Astor, 2 How. 341.

3. If the act of 1847, as before claimed, and as decided in *Cooper vs. Roberts*, was not intended to, and in fact did not include section 16 in the lands to be sold, then the lease of course falls as to that section, so far as it depends on that act.

But, supposing that act did include sections 16, as to be sold, and recognize leases of them, still the lease was removed as an impediment to the title of Michigan, through its own expiration by "efflux of time;" by want of a renewal according to *the terms of the*

lease; by a failure to enter and purchase *during the continuance of the lease;* and by the repealing clause of the act of 1850.

The 3d section of that act gives the right of pre-emption, entry, and purchase, to lessees, only "*during the continuance of the lease.*" And the 4th section expressly provides that the lands of lessees, who had *fulfilled, might be sold,* after the expiration of their leases "by efflux of time, voluntary surrender, or other legal extinguishment," unless they had availed themselves of the privilege given in 3d sect. of entering such lands during the terms of their leases. This plainly puts an end to the leases on their expiration, and by necessary inference forbids their renewal.

It appears that the act of 1847 was passed nearly a year and a-half before the expiration of the lease, which according to its own terms, expired in 1848; and yet no application to submit pre-emption proofs under the act and to enter and purchase, was made till Nov. 6th, 1850. (*Rec. p.* 19, *subd.* 8.)

5. It is claimed, that there was a renewal of the lease under the act of 1850. What does this Act do? It simply abolishes all distinction between mineral and non-mineral-lands; declares they shall be "offered far public sale in the same manner, and be subject to the same minimum price, and the same right of pre-emption as the other public lands;" and makes the necessary repeal of the act of 1847, with a *proviso,* that such repeal shall not impair the right of the lessees to enter as given by the act of 1847, but they can enter "*as therein provided.*" How does that act provide? For an entry "*during the continuance of such lease.*"

Therefore the act of 1850, so far as its terms relate to the lessees, simply leaves the Act of 1847 unrepealed as to their right "as therein provided." It is no renewal of the lease, and gives no *new* right, except that of the minimum price of all the public lands.

6. But suppose the act of 1850 were to be construed as a legislative renewal of the lease; the answer is perfect, covering that and all the other contingencies.

The township was surveyed into sections in 1847, so that the title of Michigan attached as a legal title, *in* 1848, when the lease expired; *on Sept. 26th,* 1850, when the act of 1850 was passed; on *Nov. 6th,* 1850, when the plaintiffs' applied to enter and purchase, and obtain their patent and on April 9th 1852, the date of plaintiffs entry and purchase,

Section 16, was a surveyed section, and therefore in a condition for the title of Michigan to attach and become a legal title, at *each* of those periods after the survey, and when *each* of those events successively occurred.

7. But it is said, that the instructions and practice of the General Land Office operated by implication as a renewal of the lease. The answer to this is equally plain and perfect.

No power can dispose of the public lands by lease or otherwise, except the power of Congress, which is expressly given to that body in the Constitution, or some power conferred by Congress. Congress only can renew the leases, for a renewal is, as to the *power* to make it, equivalent to a new lease. Congress had conferred no power on the officers of the land office to dispose of the public lands by making or renewing leases.

It requires the same power to dispose of the public lands by a lease or a renewal of a lease, as to dispose of them by a sale or patent—the same power to fix the price and terms of a lease or those on which it can be renewed, as to fix the price and terms of a sale.

The lease expired by its own terms, and without any renewal on its expiration, so that, whether valid or not, section 16 being then surveyed, the title of Michigan was then attached as a valid, legal title against any subsequent disposition of it by the Land Officers or by the act of 1850.

8. The questions of a renewal of the lease by the action of the officers of the General Land Office, and of the effect of the act of 1850, were raised and discussed before this Court, and passed upon in the case of *Cooper vs. Roberts*, and there stood on the strongest footing claimed for them by the plaintiff.

App. to Brief, p. 6, 11.
Cooper vs. Rob. 18. How. 179.

The question as to the effect of the act of 1850, on the plaintiff's patent was necessarily before the court in that case, for his patent recites on its face, that it is based on that act, as well as the act of 1847.

In that case, the facts on which this renewal was claimed, were admitted. In this case, they are embraced in the subdivisions of the finding, Nos. 6, 34, 36, 37 and 38, but they were shown by the deposition of John Wilson, which was offered and admitted for that purpose, subject to objections for irrelevancy and immateriality. (pp. 6 and 7.)

These facts, it is insisted, are irrelevant and immaterial to the

lease; by a failure to enter and purchase *during the continuance of the lease;* and by the repealing clause of the act of 1850.

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It appears that the act of 1847 was passed nearly a year and a-half before the expiration of the lease, which according to its own terms, expired in 1848; and yet no application to submit pre-emption proofs under the act and to enter and purchase, was made till Nov. 6th, 1850. (*Rec. p.* 19, *subd.* 8.)

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The township was surveyed into sections in 1847, so that the title of Michigan attached as a legal title, *in* 1848, when the lease expired; *on Sept.* 26*th,* 1850, when the act of 1850 was passed; on *Nov.* 6*th,* 1850, when the plaintiffs' applied to enter and purchase, and obtain their patent and on April 9th 1852, the date of plaintiffs entry and purchase,

Section 10, was a surveyed section, and therefore in a condition for the title of Michigan to attach and become a legal title, at *each* of those periods after the survey, and when *each* of those events successively occurred.

7. But it is said, that the instructions and practice of the General Land Office operated by implication as a renewal of the lease. The answer to this is equally plain and perfect.

No power can dispose of the public lands by lease or otherwise, except the power of Congress, which is expressly given to that body in the Constitution, or some power conferred by Congress. Congress only can renew the leases, for a renewal is, as to the *power* to make it, equivalent to a new lease. Congress had conferred no power on the officers of the land office to dispose of the public lands by making or renewing leases.

It requires the same power to dispose of the public lands by a lease or a renewal of a lease, as to dispose of them by a sale or patent—the same power to fix the price and terms of a lease or those on which it can be renewed, as to fix the price and terms of a sale.

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In that case, the facts on which this renewal was claimed, were admitted. In this case, they are embraced in the subdivisions of the finding, Nos. 6, 34, 36, 37 and 38, but they were shown by the deposition of John Wilson, which was offered and admitted for that purpose, subject to objections for irrelevancy and immateriality. (pp. 6 and 7.)

These facts, it is insisted, are irrelevant and immaterial to the

issue, and if admitted, form no basis for claiming a legal renewal of the lease.

After the case of *Cooper vs. Roberts* was remanded from the Supreme Court of the United States for a new trial, on the second trial, *this same* deposition of Wilson was offered by Roberts, the defendant in that case, and ruled out for irrelevancy under exception. When the case went a second time to that Tribunal, Roberts being plaintiff in error, the question was raised as to the admissibility of this deposition.

On that question the court says, "*the deposition refers to no facts relevant to the issue.*"

Roberts vs. Cooper, 20, How. 481.

In the case of *Cooper vs. Roberts*, in considering the question, whether the act of 1847 created a legal impediment to the title of Michigan, and after deciding, that it does not withdraw the mineral lands from the compact with Michigan, the court proceed to the question of the lease thus, viz:

"Did the execution of the lease by the Secretary of War in 1845, before the survey of the lands, dispose of these lands so as to defeat the claim of the State."

In disposing of that question, the court say:

"The Minnesota Mining Company, at the date of the act of March 1st, 1847, held the unexpired lease by assignment, and continued to perform its conditions until their patent was issued."

"The third section of that act authorized the persons in possession under such a lease, who had fulfilled its conditions, to enter in one tract all the lands included in it, at a diminished price, "*during the continuance of the lease.*" The fourth section directed the sale of the mineral lands contained in the report, but with a proviso, that none of the lands contained in any outstanding lease whose conditions had been fulfilled, should be sold till the expiration of the lease, either "by efflux of time, voluntary surrender, or other legal extinguishment."

"The act of Congress of September, 1850, (9 Stat. at Large, 472,) abrogated such of the clauses of the act of 1847 which distinguished the mineral from other public lands, and placed them alike, under the ordinary system for disposal of the public domain, but

reserved to lessees and occupants the privileges conferred by the act of 1847."

"From that time, therefore, the argument "that the mining lands within the district were taken out of the general law for the disposal of the public lands, by the act of March, 1847," lost all its cogency, and the rights of the Minnesota Company depended entirely upon the validity of the lease and the protection accorded to the lessee."

"The lease expired by "efflux of time," in September, 1848."

"There was no renewal of the lease, for the double reason, that its original validity was doubted by the highest executive authority, and those doubts were submitted to by the lessee, and because Congress had passed the law for the disposal of the mineral lands, which determined the covenant for the renewal, by the terms of the lease itself.

And the court further say, finally:

"Had there been a legal impediment to the execution of the compact with Michigan, erected either by the second section of the act of 1847, which separated for some purposes the mineral from other public laads, or by the privileges granted to lessees or their assigns, in the third section of that act, it was removed by the repealing clause of the act of 1850, and the non-compliance with the conditions on which the privileges depended. The section No. 16 was, at that date disencumbered, and subject to the operation of the compact, whatever might have been its pre-existing state."

Cooper vs. Roberts, 18 How. 181.

9. The record in Cooper vs. Roberts shows that all the material facts before the court in this case were before the Supreme Court of the U. S. in that case; and all the material questions now raised, touching the compact with, and grant to, the State of Michigan, the act of 1847, the leases, the act of 1850 and the validity of the plaintiff's patent, were also then before the court. (See that case, and rec. in app. to brief.)

And that court, in terms which cannot be misunderstood as covering the whole of that, and of this case, did further decide as follows:

"We think that the jury should have been instructed, that the section No. 16 was vested in the State of Michigan at the date of the

entry of the Minnesota Mining Company, and that the Company did not acquire title by its patent."

Cooper vs. Roberts, 18 How. 181.

And that the court did not simply reverse the judgment of the court below, but in addition to its decisions before noticed, did decide on the whole record as follows:

"Upon the whole record, we think the jury should have been instructed, that if they found the facts thus given in evidence to be true, the plaintiff was entitled to recover the premises in questions."

Cooper vs. Roberts, 18 How. 182.

There were in that case other questions (not now before the court) raised on objections to the validity of the sale and patent by the State to Williams. That case, as before stated, was again tried, and it again went to the Supreme Court of the U. S., (Roberts being plaintiff in error,) with all the same questions, and the additional questions of champerty, (also not now before the court,) made against Cooper's title, and that of the admissibility of the same deposition of John Wilson, offered in this case. The court decided said additional questions, but declined to review its former decision.

Roberts vs. Cooper, 20 How. 481.

Thus we find the law of this case on the finding, treating is as a special verdict, settled by the proper court of highest and last resort for the settlement of such cases. It ought to end forever, this multiplied, protracted and vexatious litigation.

Nearly seven years have now elapsed, since, pursuant to that decision, and the mandate of this court, Cooper was put into possession, which he or his tenant, the National Mining Company has ever since held. It is to be presumed that in the mean time, important titles, rights and interests have grown up, resting upon that decision, which on obvious grounds ought not now to be unsettled and destroyed, if they can be legally preserved.

9. It may also be justly claimed, that the present plaintiff is barred in this action, by the judgment in *Cooper vs. Roberts.*

The facts exist of record in *this* case, that the plaintiff filed his sworn bill in equity, *perpetually to restrain the prosecution of that action;* and also that he alleged in said bill, that, without a discovery, *he* could not safely proceed *to trial and to his defence* in said action.

Rec. p. 25, subd. 26.

And the further facts exist of record in this case, that the present plaintiff was in that action Roberts' land lord, and that he came in and actually defended in that action upon his own title which was that of his tenant. And it should be presumed in support of the record, that he was properly and regularly in court to defend.

Rec. p. 24, subd. 25.

Thus, in that cause, the present plaintiff had his day in court, upon the same facts, the same title in dispute, and by his own actual defence to the action.

10. *Finally*, if the plaintiff's title under his patent be invalid, it necessarily results in an affirmance of the judgment below.

Such invalidity also disposes of the questions of evidence raised by the second and third assignments of error, for neither of them affects the question of the validity of the plaintiff's patent, or can change the result to be reached on that point. They are also otherwise disposed of as hereinafter shown.

QUESTION V.

Did the Court err in rejecting the deposition of Porter Kibbee, as first offered, to show that at time of State sale of section 16, *he was induced by fraudulent representations to make it.* (Rec. Bill of Exc., p. 11, Ass. of Err. p. 56.)

We presume, that this question will not be urged by plaintiff's counsel. If it is, we answer:

1. This court has no jurisdiction of that question, in the present case. It does not respect the construction of the acts of Congress now drawn in question.

2. The question is immaterial. If there were any fraud in the State sale, such fraud would not impair the State's title under the grant by Congress of June 23d, 1836. Such fraud, if it existed, concerns only the defendant's record title from the State. But this, as we have already seen, they are under no necessity of establishing in this action.

3. This question *is already fully disposed of* by disposing of the paramount and decisive question of the validity of the plaintiffs' patent, under LEGAL QUESTIONS, I., II., III., IV.

4. The evidence was incompetent. A patent, regular on its face, cannot by third parties be impeached by evidence *dehors* the grant.

See Bledsdoe vs. Wells, 4 Bibb. 329.
See also Bragnell vs. Broderick, 13 Peters, 436.
Parmerlee vs. Oswego Railroad Co., 7 Barbour, 599.
5th Denio, 398.
Jackson vs. Marsh, 6 Cowen, 281.
Jackson vs. Lawton, 10 Johnson, 23.
Jackson vs. Hart, 12 Johnson, 82.
Bruckner vs. Lawrence, 1 Doug. (Mich.) Rep. 38.
Patterson vs. Winn, 5 Pet., 241.

5. It will be insisted, that whatever the title might be, as between the State and the purchaser, a second *bona fide* and innocent purchaser is protected under a patent, and it cannot be invalidated by the State, much less by third persons and strangers, by any inquiry into its origin.

Polk's Lessee vs. Wendell, 5 Wheat. 307.

In Miller vs. Holt, 1 *Tenn. Rep.* 111, it was expressly adjudged, that, whether a grant in its origin be void or voidable, a junior grantee shall not avail himself of its nullity as against innocent purchasers without notice.

6. The plaintiff is not in a position to raise the question of fraud.

He does not claim under, or, in privity with the State; but denies its title, and, consequently, that of the defendants, as derived from the State; and does claim under a different and hostile title.

He was an occupant, without authority in writing from the Commissioner of the Land Office of Michigan, and as such became a trespasser on the public lands of that State, under the express provisions of its Statutes, and this was so held in *Cooper vs. Roberts.*

1 V. Comp. L. of Mich. Sect. 2506.
18 How. 179.

If the sale was induced by fraud, the State was the party defrauded.

Therefore, it matters not to the plaintiffs or their title, whether the State sale was invalid or induced by fraud, or valid or not so induced.

7. It is for the party defrauded to complain, if there be fraud, or to waive it.

Not only has the State not complained, but waiving fraud if any it retains the price, and further, by an act of the legislature, passed several years after the sale, has confirmed the sale as from its date, and authorized the patent.

Mich. Sess. L. 1855, p. 286.

As a grant or sale may be made by law without a patent, it follows and so the Court expressly say, that "a confirmation by law is as fully, to all intents and purposes, a grant, as if it contained a grant *de novo*," in

Strother vs. Lucas, 12 Pet., 454.

Therefore, it is clear on principle, that the confirmation of the sale and patent was equivalent to a *new* sale and *new* patent to Williams.

8. This question, as one of legal principle, has been settled.

In *Polk's Lessees vs. Wendell*, 5 *Wheat.* 307, the Court say, "they have never expressed an inclination to let in inquiries into the *frauds* irregularities, acts of negligence or of ignorance of the officers of Government, prior to the issuing of the grant; but, on the contrary have expressed the opinion that the Government must bear the consequences;" and this is affirmed in *Patterson vs. Jenks*, 2 *Pet.*, 237.

In *Steele vs. Worthington*, 2 *Ham.*, 182, (2 Ohio, Condensed R., 317,) where Steele objected against Worthington's title, because, being the register of the land office, he had purchased the land, the Court say, "if the register had been guilty of a manifest fraud on the Government, it is a question between the parties affected by the transaction. Government might have disavowed the contract, and witheld the title, or they might have waived the objection and confirmed the sale. This they have done, and it does not lie in the mouth of a third person to complain."

Further, this question has been settled with *special* reference to the sale and patent by the State in Cooper vs. Roberts.

There the Court say:

"The officers of the State of Michigan, embracing the chief magistrate of the State, and who have the charge and the superintendence of this property, certify this sale to have been made pursuant to law, and have clothed the purchaser with the most solemn evidence of title. The defendant does not claim in privity with Michigan, but holds an adverse right, and is a tresspasser upon the land, to which her title is attached.

Michigan has not complained of the sale, and retains, so far as the case shows, the price paid. Under these circumstances, we must regard the patent as conclusive of the fact of a valid and regular sale on this issue."

18 How., 182.

QUESTION VI.

Did the Court err in rejecting the evidence offered in connection with the deposition of Porter Kibbee, not to impeach the State patent, but to show the time when the state first asserted a title. (Rec. Bill of Exc., p. 11, Ass. of Err. p. 56.)

This question, also, like that last noticed, (question v.), we presume, will not be urged by the plaintiff's counsel. If it is, we answer:

1. This court will not now take jurisdiction of it, as it does not respect the construction of the acts of Congress now drawn in question.

2. It concerns only the defendants' record title, and that they need not establish in this action.

3. Like question V., it is already fully disposed of, by disposing of the paramount and decisive question of the validity of the plaintiff's patent.

4. So far as the evidence offered relates to any *assertion of title by the State*, the deposition relates to the sale in Feb. 1851, and the facts offered in connection relate to the subsequent controversy in the General Land Office in 1851. The *offer* was to show in connection with the deposition, that the title of the State was in that controversy urged and represented by unauthorized persons, and the *object* of the offer was, to show *when* the State *first* asserted title.

The offer then amounted to this, viz.: to show, in connection with the deposition, *that the State was not present to assert any title in that controversy, and consequently did not do so*, and for the *purpose* of showing, *when* the State *first* asserted title.

We cannot conceive, how the offered evidence, that the State didn't assert title at all on one occasion, and did so on another, could show, *when* she *first* asserted title.

5. But suppose the State was properly represented in that controversy to assert her title, and did do so, (which however the evidence was offered to deny), what follows? In such case the evidence offered would tend to show, that the State asserted title by her sale in Feb. 1851, and in the subsequent controversy referred to; but by no means that the *first* asserted title, on either of those occasions.

6. It is altogether immaterial in this case, when the State first asserted her title, after the grant.

There was no statute of limitations to run against the State. She could assert her title at any time, whenever and wherever it was proper or needful to do so.

Her special legislation to confirm her sale and patent to the defendants' grantor, was a sufficient assertion of her title.

Her continued legislation, dating as far back as 1838, and assuming the power to control and dispose of sections 16 as her primary

school lands, was a sufficient assertion of her title, and of such legislation the court will take cognizance.

And finally, her acceptance of the grant, under the forms of a solemn legislative compact, containing its propositions, considerations and conditions, and declared to be obligatory on the parties, was a sufficient assertion of her title, as against all trespassing or hostile claimants.

ALEX. W. BUEL,

Counsel for Defendants in Error.

APPENDIX.

RECORD.

SUPREME COURT OF THE UNITED STATES.

JAMES M. COOPER, Pl'ff in Error,
vs.
ENOCH C. ROBERTS. } In Ejectment.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MICHIGAN.

* * * * * * * * *

DECLARATION.

THE UNITED STATES OF AMERICA, ss:

Circuit Court U. S. for the 9th Circuit and District of Michigan, of the Term of June, 1853.

John Doe complains of Richard Roe, for that whereas heretofore, to wit: on the 23d day of April, 1853, in the State of Michigan, and District aforesaid, James M. Cooper, who then was, and still is, a resident citizen of the Commonwealth of Pennsylvania, had devised

to the said John Doe the lands and tenements hereinafter specified, with the appurtenances thereunto belonging, situated in the county of Ontonagon, in said State of Michigan, known and described as follows, viz: The east half of the north-east quarter of section number sixteen (sec- 16), in township number fifty (No. 50), north of range number thirty-nine (No. 39) west; and the east half of the south-east quarter of the same section, township and range, containing together one hundred and sixty acres, more or less, excepting and reserving, however, from the same, two tracts of land, parcels of said premises, containing twenty-two and a half (22½) acres each, which said two tracts are described as follows, viz: one tract beginning at the southeast corner of said section, and running thence west, forty (40) rods, thence north ninety (90) rods, thence east forty (40) rods, thence south ninety (90(rods, to the place of beginning; and the said other tract, beginning at the northeast corner of said section, and running thence west, forty (40) rods; thence south, ninety (90) rods; thence east, forty (40) rods; thence north, ninety (90) rods, to the place of beginning: To have and to hold the said demised premises to him, the said John Doe, from the said twenty-third day of April, 1853, for and during the term of ten years, thence next ensuing. By virtue of which said demise the said John Doe afterwards, to wit: the same day and year, entered into the said land and tenements above mentioned, with the appurtenances, and was thereof possessed for the term aforesaid. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit: on the same day and year aforesaid, with force and arms entered into the said lands and tenements, with the appurtenances, and then and there ejected the said John Doe therefrom, and other wrongs and injuries to the said John Doe then and there did, to his damage ten dollars. And therefore he sues. &c.

SAMUEL F. VINTON,
Attorney for Plaintiff.

* * * * * * * * *

BILL OF EXCEPTIONS.

CIRCUIT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF MICHIGAN.

JAMES M. COOPER,
vs.
ENOCH C. ROBERTS.

Be it remembered that on the trial of this cause, an agreed statement of facts dated Washington City, April 17th, 1854, signed S. T.

Vinton, for plaintiff, and Truman Smith, for defendant, with all the papers therein referred to and thereto annexed, was read in evidence to the jury. A true copy of which said statement with a copy of all the papers thereto annexed, being sixteen in number, is hereunto appended.

It was further given in evidence to the jury that the corners of the township number 50 north, range 39 west in Lake Superior Land District, were established, and said township surveyed by the Government of the United States, and run out into sections in the summer of 1847, which survey was duly returned, approved and established in the fall of that year, and that the corners of all the townships in that part of the Upper Peninsula, were established and and the townships surveyed, and the surveys approved and established at the same period.

The defendant gave in evidence the report of Charles T. Jackson, United States Geological Surveyor of the Mineral Lands of the United States, in Michigan, to the Secretary of the Interior, of the date of November 10th, 1849, printed as one of the accompanying documents of the President's Annual Message to Congress, in December, A. D. 1849, under the order of the House of Representatives, for the session of 1849-50, which report at page 626 contains a list of the Mineral Lands between Portage Lake and the Montreal River, in which list the east half of said section 16 in said township number 50, is set down as Mineral Lands, which report the law required to be transmitted to the executive of the State, and which books of reports are kept in the State Library at Lansing. The defendant also proved that from some time in the latter part of the year A. D. 1847, down to, and including the time when said section number 16 in said township number 50 was sold by said State of Michigan, to Alfred Williams, the said Minnesota Mining Company was in possession of the land now in controversy under said lease number 78, to which the same had been assigned, and had, prior to said sale, by said State of Michigan, sunk one or more shafts for copper on said land, on a vein known to be valuable in the neighborhood, and had made valuable improvements on that part of their leasehold premises, and that there was reason to believe it was valuable copper land.

The plaintiff introduced Porter Kibbee as a witness, who testified that at and before the time of the publication of the advertisement, marked No. 1 in said agreed statement, and at the time the lands therein specified were offered for sale under that advertisement, he was the Commissioner of the State Land Office of the State of Michigan. That said report of said Jackson was not in his office. That he had never seen it, did not know its contents or that it existed, and did not know or suspect that said section number 16 contained mines or minerals, or that it had been reported to the Government of the United States as Mineral Land. On cross-examination by the defendant, he testified that he enquired of the person who applied to him to advertise for sale the lands specified in said advertisement, whether said lands were Mineral Lands, and was told by said person

in reply, and believed the same to be true, that said lands were not Mineral Lands, and were only valuable for the timber they contained, and that at the time of said advertisement and sale of said section number 16, in town 50, he had no knowledge that it contained mines or minerals. The plaintiff did not offer further evidence to prove that said Kibbee made other enquiry than the above to ascertain whether said lands contained mines or minerals. It was further given in evidence that the Minnesota Mining Company continued in the occupancy of the land in question under their lease, down to the date of the issuing of said patent, and that they complied with all the conditions and requirements of their lease to the time of the emanation of said patent.

The defendant introduced George W. Thayer, Chief Clerk in the office of the Surveyor General of Ohio, Indiana and Michigan, who produced the following table of the lengths of the north boundaries of all the townships numbered 50 north in the Upper Peninsula of Michigan, including township number 50, north of range 39 west, and also a table of the distances across the north side of sections number one, two, three, four, five and six, in said last mentioned township, which he testified were correct, said tables are as follows:

* * * * * * * * *

The counsel for the plaintiff prayed the Court to give the following instructions to the jury:

1st. That if they found the facts thus given in evidence, to be true, that the plaintiff was entitled to recover the premises in question.

2d. That the act of Congress of March 1st, 1847, referred to in defendant's patent and under which the same was issued did not give to said Minnesota Mining Company as assignees of said lease number 78, a right to enter and purchase the land now in controversy.

3d. That the Register and Receiver of the Lake Superior Land District, had no authority, after the expiration of said lease, to receive the application of said Minnesota Mining Company to enter the land in question under said lease, or to receive and decide upon the proof required by said act of March 1st, 1847, to be made by the lessee, and decide upon such proof, and permit the land in question to be entered under such lease after the expiration thereof.

4th. That the said patent of the Minnesota Mining Company for so much of the land it purports to grant as lies within the limits of said section number 16, in town 50, was issued without authority of law, and is null and void.

The court declined to give any one of said instructions as prayed for, but instructed the jury as follows: That no facts conducing to show fraud behind the patent could be examined, as the court had

limited the question of fraud to the procurement of the patent; and that the agreement of the parties on file, in which it was admitted that the land was advertised four weeks as the Statute required, that Williams became the purchaser, paid a part of the purchase money down at the sale, in pursuance of the terms of the sale, and received the certificate; afterwards that he paid the purchase money in full, received the patent and conveyed the land in controversy to the plaintiff; was a recognition of his agency which the parol evidence does not and cannot obviate—the facts having been admitted as above—the jury will be governed by them.

The court also instructed the jury that the title to section 16 under the grant could not be considered as absolutely vested in the State, until the surveys were executed, that the terms of the grant were, that "Section 16 in every Township of the public lands, and where such section has been otherwise disposed of, other land, equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of Schools."

That from the language of the grant it was to take effect in future, and could not be considered as appropriating any specific tract of land until the surveys were executed, by which means only could the locality of such tract be ascertained.

The court also instructed the jury that by the act of the 1st of March 1847, Congress established the "Lake Superior Land District," and by the 2d section required the Secretary of the Treasury to cause a geological examination and survey to be made of the District, and all lands which contained lead or copper ore, or other valuable ores, should be specially designated by him and reported to the Commissioner of the General Land Office, which lands the President was authorized to sell by giving six months notice, describing the mines specially, as to the quality of the ores, their extent, the facilities of transmitting the proceeds of the mines to market.

Second: All other lands in the District, not included in the report, were directed to be sold under the general law, then in force, reserving section 16 for the use of schools.

That the 3d section gives to miners who have settled upon mineral lands under a permit or license from the Secretary of War, or who have occupied mineral lands prior to the passage of the act, a preemption right or right of purchase of lands within their leases and permits, and to cover the land occupied by them for purposes of mining at two dollars and fifty cents per acre; other mining lands not occupied, to be sold at five dollars per acre.

That under the above act, all the mining lands within the District, reported, were taken out of the operation of the general law for the disposal of the public lands, in pursuance of an established policy, to reserve from the ordinary mode of disposing of public lands, those that contained valuable salt springs, lead mines, &c., that they might be leased or disposed of to purchasers having full knowledge of their value, by reason of the salt springs or mineral ores they contained, at their full value, for the public benefit. That by the above act, all

the mineral lands reported by the geologist within the district, in pursuance of this settled policy of the Government, were appropriated and disposed of without reference to the school reservation, the appropriation of the land being made before the surveys were executed, and before the locality of section 16 could be known, and as it appears from the report of the geologist that the land in controversy contains valuable minerals, and was within the boundaries of the lease under which the Minnesota Company claim, and that they had made large expenditures thereon for mining, were entitled to the right of purchase, as provided in the third section of the above law, and having paid for the same, it was a disposition of the land which Congress had a right to make, and was an exercise of power within the grant. That the setting apart of another section adjacent will satify the grant to the State.

The court further instructed the jury that as the right to become purchasers of the mining lands within the above lease was admitted by the Government, with the exception of the land in controversy, which is included in section 16, and as to which the patent was to create no embarrassment, as the right of the State was reserved, no question arises as to the right of purchase of the other land by the Minnesota Mining Company, but the objection by the plaintiff seems to rest on the right of the State to section 16, as a school section, under the original grant.

The three years' lease of the Company, of which they were assignees, had expired before the defendant's puachase was made, but it is admitted that the same lease was continued by the sanction of the Government, and the rent stipulated by the lease was regularly paid, and that all the conditions of the lease were performed by the Company up to the time they obtained their patent. This extension and continuauce of the lease brought the case substantially within the provisions of the act of 1st March, 1847.

That that act, by taking the mineral lands from under the operations of the general law, directing their sale under special provisions, without any reservation, and giving pre-emption rights before the surveys were executed, and, consequently, before the title vested in the State was an appropriation of the land within the powers of Congress, inconsistent with the right set up by the State, and was such a disposal of the section, as was not prohibited by the grant.

The court also instructed the jury, that the sale of section 16, which contained minerals, by the State Commissioner of Lands, was not authorized by the laws of Michigan, and consequently that the said sale was void and inoperative; that the Commissioner was bound to make inquiry, whether that section contained minerals. That the act of the 1st of March, 1847, requires a geological examination and survey of all the mineral lands within the land district, and directing a report of the same to be made to the Commissioner of the General Land Office, at Washington City, and that the publication of such report, by the authority of Congress, all such reports being public documents, which were required to be transmitted to the Executive

of each State, which reports are preserved in the library of the Secretary of State, at Lansing, afforded an opportunity to the Commissioner, by the use of ordinary diligence before the sale, to ascertain whether section 16 contained minerals.

To all and each of which instructions of the court to the jury, the plaintiff by his counsel excepted, and this bill of said exceptions being reduced to writing, was then and there signed and sealed by the Judges of said court in open court, and ordered to be made a part of the record in this case.

(Signed) JOHN McLEAN, [L. S.]
(Signed) ROSS WILKINS, [L. S.]

Copy of the agreed statement of facts, and all the papers therein, and in the Bill of Exceptions referred to, being 16 in number.

IN CIRCUIT COURT U. S.
for District of Michigan:

JAMES M. COOPER, vs. ENOCH C. ROBERTS. } In Ejectment.

To relieve both parties from the necessity of making proof of such facts as are supposed to admit of no question so far as respects their existence, the matter hereinafter specified are *prima facie* to be taken and admitted to be true: subject, however, to be disproved, rebutted, and their effect invalidated to the same extent, and in the manner as though the proof thereof had been made by either party, without entering into this agreement; and the parties respectively are to have the same right to except to the admissibility, or relevancy of any of said matters, as though they were offered in evidence by one party, and objected to by the other. On the above conditions it is admitted.

That James M. Cooper, the plaintiff, is a citizen and resident of the Commonwealth of Pennsylvania, and that the defendant, Enoch C. Roberts, is a citizen and a resident of the State of Michigan, and is in possession of the premises in dispute.

That the Commissioner of the State Land Office of the State of Michigan did, on the 22d day of January, 1851, advertise for sale for the period of four consecutive weeks from that date, in a newspaper called the "Lansing Journal," published in the city of Lansing, Michigan, certain sections, number sixteen, in the Lake Superior Land District, in that State, claimed by the said State of Michigan as school lands, of which the land now in controversy is part, a copy of which advertisement is hereunto annexed, marked Paper No. 1—which period of four weeks was the length of time during which it was the practice of said State Land Office to advertise the State school lands for sale.

That pursuant to said advertisement, the said Commissioner of State Lands, at the office of said Commissioner, in said town of Lansing, did, on the 25th day of February, A. D. 1851, sell at public atction to Alfred Williams, for the sum of two thousand five hundred dollars, the said section number 16, in township number 50, north of range number 39 west, containing six hundred and forty acres, of which section the land now in controversy is part, as will more fully appear by the certificate of Allen Goodridge, Deputy Commissioner of State lands, of the date of the 25th of February, 1851, a copy of which, marked Paper No. 2, is hereunto annexed.

That at the time of said sale, the said Alfred Williams paid to the Treasurer of said State of Michigan, the sum of six hundred and forty dollars, in part of the purchase money of said section, as will appear by said Treasurer's receipt, dated February 26th, 1851, a copy of which, marked Paper No. 3, is hereunto annexed.

That on or prior to the 13th of November, A. D. 1851, the said Alfred Williams paid to the State of Michigan the full amount of principal and interest due on said section of land, and obtained the State Land Commissioner's certificate that he was entitled to a patent for said section of land, as will appear by the certificate of Allen Goodridge, Deputy Commissioner of State lands of that date, a copy of which, marked Paper No. 4, is hereunto annexed.

That in pursuance to said last named certificate, the Governor of said State of Michigan did, on said 13th of November, A. D. 1851, issue his patent to said Alfred Williams, his heirs and assigns, for said section of land, a copy of which, marked Paper No. 5, is hereunto annexed.

That on the 19th day of May, A. D. 1852, the said Alfred Williams, for the consideration of ten thousand dollars, sold and conveyed, by deed of conveyance duly executed, all of said section number sixteen, to said James M. Cooper, his heirs and assigns; except certain parts thereof therein excepted; a copy of which conveyance, marked Paper No. 6, is hereunto annexed; and embraces as part of the land conveyed, and not excepted, the premises now in controversy and which the said James M. Cooper in fact holds in trust for the National Mining Company.

It is further admitted on the conditions above expressed, that on the 5th of August, 1844, Walter Cunningham, agent for the Mineral Lands of the United States, gave to Joseph L. Hempstead, a permit for the term of one year, to examine and dig for lead and other ores in any part of the lands known as the mineral district, in the region of country south of Lake Superior; a copy of which permit is hereunto annexed, marked Paper No. 7.

That on the 7th of July, A. D. 1845, the said Joseph L. Hempstead transmitted to the then Secretary of War, a description and plat of the land he had selected for the purpose of mining thereon, which called to begin at a stake on the east bank of the Ontonagon river directly opposite to the point where the west branch of said river enters the main stream, and running east three miles; thence

north three miles; thence west three miles; thence south three miles to the place of beginning; which description was accompanied by the certificate of John Stockton, Superintendent of the mineral lands that he had carefully examined the said description, and found that it did not conflict with any other location made under proper authority, and recommended that a lease for the same be granted to the said Hempstead; a copy of which said description, plat and certificate, are on the same sheet of paper with said copy of said permit, marked Paper No. 7. as above.

That on the 16th of September, A. D. 1845, the then Secretary of War granted to said Joseph L. Hempstead for the term of three years, a lease of the above described tract of land; a copy of which, marked Paper No. 8, is hereunto annexed.

That on or about the 6th of November, A. D. 1850, E. C. Roberts, the present defendant, as agent for the Minnesota Mining Company, applied to the Receiver of the Land Office, at Sault St. Marie, to purchase said leasehold premises, and submitted his proofs for that purpose, which said Receiver refused to act upon, for the reason that the said land office was then closed for want of a register, as will appear by a letter from said Receiver to the Commissioner of the General Land Office, dated June 28th, 1851, a copy of which, marked Paper No. 9, is hereunto annexed.

On the 10th of November, 1851, the Minnesota Mining Company, to which said lease in Equity belonged, applied again to the Register and Receiver of the Sault St. Marie Land District, to enter the land covered by the said lease, who being satisfied with the proofs, submitted to them in support of said claim, allowed said company to enter said land, in the corporate name of said Minnesota Mining Company to the extent claimed by them, except so much thereof as lay within the limits of said section No. 16, as will appear by the letter of the Register and Receiver of said Land Office, of the date of November 10th, 1851, reporting their doings in relation to said entry to the Commissioner of the General Land Office, a copy of which, marked Paper No. 10, is hereunto annexed.

The first application to enter said land under said lease was made, as above stated, to said Receiver, on said 6th of November, A. D. 1850, as appears by a letter from the Commissioner of the General Land Office to S. F. Vinton, dated September 1st, 1853, which letter is hereunto annexed, marked Paper No. 11.

On the 10th of September, A. D. 1851, the Secretary of the Interior, on the claim of the State of Michigan, under the compact for her admission into the Union, to be the rightful owner of such sections, numbered 16, as might be covered or interfered with by a mineral lease, decided that the act of the 1st of March, A. D. 1847, entitled "An Act to establish a Land Office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan," did not authorize the holder of a mineral lease to enter section 16, and that said section under said compact, belonged to said State, as will appear by the letter of the Secretary of the Interior to

the Commissioner of the General Land Office, of the date of September 10th, 1851, a copy of which, marked Paper No. 12, is hereunto annexed.

The Minnesota Mining Company took an appeal from so much of the decision of the Register and Receiver of said 10th of November, A. D. 1851, as refused permission to said Company to enter any part of section No. 16 under said lease, which decision of said Register and Receiver was, on the 15th of December, 1851, confirmed by the Commissioner of the General Land Office; from which last mentioned decision an appeal, on behalf of said Minnesota Mining Company, was taken to the Secretary of the Interior, who, on the 4th of February, A. D. 1852, on the application of the agents of the Minnesota Mining Company, in order to enable said Company to test their title to that part of said section which might be embraced within the limits of said lease, by a letter of that date, addressed to the Commissioner of the General Land Office, consented that their entry should embrace all the land covered by said lease, but that no patent should be issued without a reservation of the right of the State of Michigan to so much of said section No. 16, as might be covered by said lease, as will appear by said last named letter, a copy of which, marked Paper No. 13, is hereunto annexed.

On the 9th of April, 1852, a patent was issued to the said Minnesota Mining Company, embracing the land now in controversy, a copy of which, marked Paper No. 14, is hereunto annexed.

The said defendant, Enoch C. Roberts, holds possession of the land in controversy, under the said Minnesota Mining Company as their tenant.

The Commissioner of the General Land Office, on the 16th of April, 1848, issued a letter of instructions to the Register and Receiver of said land district, for their government, in carrying into effect the said act of the 1st of March, 1847, a copy of which is hereunto annexed, marked Paper No. 15. And on the 25th of the same month, the said Commissioner issued a further letter of instructions to said Register and Receiver, for their government, in carrying said act of the 1st of March, A. D. 1847, into effect, a copy of which last letter of instructions, marked Paper No. 16, is also hereunto annexed.

Printed copies of these letters of instruction were forthwith forwarded by said Commissioner to said Register and Receiver for their government, and the government of all persons of whom they might concern.

Immediately after their receipt at said land office, they came to the knowledge of the owners of said lease.

It is agreed that from the 6th of November, 1850, when the said Minnesota Mining Company first applied to enter said land, until the 10th of September, 1851, the question of the right of the mineral lessees to enter under said act of 1st of March, 1847, section 16, or any part thereof, was pending before the Secretary of the Interior, for his decision thereon, and by reason thereof the said Minnesota

Mining Company were not permitted to enter the land now in controversy. And after said decision of the 10th of September, 1851, the same being adverse to the right of the lessees to enter said section 16, the said Minnesota Mining Company was, by said decision, prevented from entering thereof, until the consent of the said Secretary was given, in the said letter, marked Paper No. 13, as above.

S. F. VINTON, *for Pl'ff.*
TRUMAN SMITH, *for Def't.*

WASHINGTON CITY, April 29th, 1854.

[NOTE.—The papers 1—16 referred to in above stipulation, are here omitted in printing. Such of them as it is necessary now to refer to, and as are material, were in evidence in the present case of Minnesota Mining Company vs. National Mining Company and Cooper, are referred to in the Bill of Exceptions and Special Finding in that case, and are in the printed record, pages 28-51.]

SUPREME COURT

OF THE UNITED STATES.

JAMES M. COOPER,
Plaintiff in Error,
vs.
ENOCH C. ROBERTS.

ASSIGNMENT OF ERRORS.

Ejectment in Circuit Court for District of Michigan.

And now the said James M. Cooper, plaintiff in error, by his counsel comes and says, that there is error to his injury in the record and judgment in this case in this, to wit:

1st. That the court erred in refusing on the trial, to give to the jury the instructions designated in the plaintiff's said Bill of Exceptions by the numbers 1, 2, 3 and 4, as prayed for by him.

2d. The court erred in their instructions to the jury that in the grant by Congress of section No. 16 to the State of Michigan, Congress retained the power of thereafter appropriating and disposing of said section before the survey thereof, by sale or otherwise, and that the setting apart of another section adjacent thereto would satisfy the grant to the State.

3d. They erred in the instruction to the jury, that all lands within the Lake Superior Land District, reported by the United States Geologist, to the Commissioner of the General Land Office as mineral lands, were appropriated and disposed of by the act of Congress of the 1st of March, 18[illegible]7, as well those *within*, as those without the limits of School Section No. 16.

4th. They erred in the instruction to the jury, that the said act of Congress gave to the said Minnesota Mining Company, as assignees of said mineral lease No. 78, a right to enter and purchase the land now in controversy, notwithstanding the same is within the limits of School Section No. 16.

5th. They erred in the instruction to the jury, that the said Minnesota Mining Company had the right to enter and purchase the land in controversy, after the expiration of their lease, by efflux of time.

6th. They erred in their instruction, that the State Land Commissioner of the State of Michigan was officially bound to know the existence of the report of the United States Geologist to the Commissioner of the General Land Office, and to inform himself of its contents before proceeding under the laws of Michigan to sell the land in controversy.

7th. They erred in their instruction to the jury, that the sale of the land in controversy by the said State Land Commissioner, under which the plaintiff claims title, was not authorized by the laws of Michigan, and was therefore null and void.

8th. The court erred to the injury of the plaintiff, in the whole and every part of their charge to the jury; except only that part thereof, which instructed them, that no facts conducing to show fraud behind the plaintiff's patent in the procurement of his title could be examined into, or regarded by them.

9th. That the court erred in rendering judgment against the said plaintiff in error.

Wherefore, for the foregoing and other manifest errors in said record, judgment and proceedings, the said plaintiff in error prays that they may be reversed, and that he may be restored to all things lost thereby.

S. F. VINTON,
J. M. HOWARD,
Counsel for Plff.

* * * * * * * * *

[TRUE COPY.]

Attest, WM. THOS. CARROLL,
Clerk of Supreme Court, U. S.